Supreme Court, U.S.
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No.

In The Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,
Petitioners,

v.

STEVEN CALL; RAY,QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,
Respondents.

Petition for Writ of Certiorari To The Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1) Whether a corporate chapter 7 bankruptcy debtor has a right to counsel in its own bankruptcy liquidation proceeding; 2) whether a corporate chapter 7 bankruptcy debtor and/or its board of directors and/or its chief executive officer itself have standing to challenge a bankruptcy filing purporting to be made on the corporation's behalf by an entity purporting to be (but whose status as such is disputed) a stockholder; and 3) can a stockholder (whose status as stockholder is disputed) place a Nevada corporation into bankruptcy?

LIST OF ALL PARTIES

In addition to the parties named on the caption, other parties who have participated in these appeals include:

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CORPORATE DISCLOSURE STATEMENT

There is a parent company which owns 100% of the stock of the Petitioner Log Furniture, Inc. It is disputed who actually owns the stock but is alleged to either be Golden Meadows Properties, L.C., a Utah limited liability company, or Granite Stone, L.C., a Utah limited liability company. Neither the corporation nor the company are publicly held.

TABLE OF CONTENTS

QUESTION PRESENTED.....i

LIST OF ALL PARTIES.....ii

CORPORATE DISCLOSURE STATEMENT.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv-v

OPINIONS BELOW.....1

JURISDICTION.....1-2

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES..2
Fifth Amendment

STATEMENT OF THE CASE.....2-6

ARGUMENT.....6-16

APPENDIX.....Attached in separate volume

TABLE OF AUTHORITIES

In re Acoustic Fibers Sound Systems, Inc., 20 BR 769 (Bankr.S.D. Ind. 1982).....16
Baker v. Carr, 369 U.S. 186 (1962).....11
In re B-K of Kansas, Inc., 82 B.R. 135 (Bankr. D. Kan. 1988).....9
Chitex Communications, Inc. v. Kramer, 169 B.R. 587, 589 (S.D.TX 1994).....15
Club v. Morton, 405 U.S. 727 (1972).....2
Coleman v. Miller, 307 U.S., at 438.....11
Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985).....12
In re Doemling, 127 B.R. 954 (W.D.Pa.1991).....8
In re Dow Corning Corp., 270 B.R. 393, 398-99 (Bankr. E.D.Mich.2001).....8
In re Farrell Realty Co., 10 F.2d 612, 614 (2nd Cir. 1925).....16
Flast *et al.* v. Cohen, 392 U.S. 83 (1968).....11
In re Giggles Restaurant, Inc., 103 B.R. 549, 553 (Bankr. D.N.J. 1989).....16
Harrison v. Wahatoyas, L.L.C., 253 F.3d 552 (10th Cir. 2001).....9
In re I.D. Craig Service Corp., 118 B.R. 335 (Bankr. W.D.Pa. 1990.....16
In re Industrial Concerns, 209 B.R. 609 (Bk. W.D.Pa. 2003).....16
John B. Hull, Inc. v. Waterbury Petroleum Products, Inc., 558 F.2d 24 (2d Cir. 1978).....12
Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994).....15
In re King Brand Food Products, Inc., 52 B.R. 109 (Bankr. Fla. 1985).....16
Price v. Gurney, 323 U.S. 696 (1944).....14,15,16
Quarter Moon Livestock Co., 116 B.R. 775, 778 (Bank. D. ID 1990).....16
Reliable Elec. Co., Inc. v. Olson, 726 F.2d 620 (10th Cir. 1984).....9
In re Roy Stanley, Inc., 217 B.R. 23, 25 (Bankr.N.D.N.Y.1997).....8
Schlesinger v. Reservists Committee to Stop War *et al.*, 418 U.S. 208 (1974).....11
In re SeaEscape Cruises, Ltd., 201 B.R. 321, 323 (Bankr. S.D.Fla.1996).....8
Sierra Club v. Morton, 405 U.S. 727 (1972). 10

In re Swift Aire Lines, Inc., 30 B.R. 490, 495 (9th Cir. BAP 1983)..8
In re T.Craft Aviation Service, Inc., 187 B.R. 703 (Bankr. N.D. Okl. 1995).....9
Tri-State Generation and Transmission Asso. Inc. v.Shoshone River Power, Inc., 805 F.2d 351 (10th Cir. 1986).....12
In re Wet-Jet International, Inc., 235 B.R. 142 (D.Mass. 1999)...16
Wiswall v. Sampson, 55 U.S. 52 (1852).....14
In re Yellow Cab Co-op. Assn., 144 B.R. 505 (D.Colo 1992).....16
In re Yellow Cab Cooperative Association, 132 F.3d 591 (10th Cir. 1997).....11
U.S. Constitution Art. III §2.....10
U.S. Constitution Fifth Amendment.....9
11 U.S.C. § 323(a).....8
11 U.S.C. § 541(a).....8
28 U.S.C §158(a)(1) and (c)(1)(A).....1, 2
28 U.S.C. §158(d).....1, 2
28 U.S.C. §1254.....2
28 U.S.C. §1654.....9
Nevada Revised Statute §78.115 15
Nevada Revised Statute §78.120.....11,14,15
Nevada Revised Statute §78.139(5).....12
Utah Code Annotated §43-1-2.....17
Bankr. Rule 9010.....9

OPINIONS BELOW

Review is sought of a panel decision in the U.S. Court of Appeals for the Tenth Circuit which was the product of appeals from three different decisions entered in the United States District Court for the District of Utah on November 4, 2004, April 7, 2005 and August 2, 2005 affirming three U.S. Bankruptcy Court decisions, which although not formally consolidated pursuant to Fed.R.App.Pro. 3(b)(2) (even though Petitioners had unsuccessfully moved to consolidate them), nonetheless were concluded with the single opinion in the Tenth Circuit Court of Appeals by a panel consisting of the Honorable Circuit Judges Carlos F. Lucero, John C. Porfilio and Harris L. Hartz dated May 11, 2006. A Petition for Rehearing was timely filed and denied by Order entered June 5, 2006.

This Order and Judgment disposed of all the parties' claims. The Order and Judgment affirmed the decisions entered in each matter by the U.S. District Court for the District of Utah which affirmed three Orders originally entered in the United States Bankruptcy Court for the District of Utah in Bankruptcy Case No. 03-36822GEC and Adversary Proceeding Nos. 04P-2497GEC and 03P-2466. The District Court orders affirmed decisions of the United States Bankruptcy Court for the District of Utah denying a Motion to Dismiss by stockholder Golden Meadows Properties, L.C. joined by Petitioners and an Adversary Proceeding, and dismissing a Bankruptcy Adversary Proceeding by Petitioners against Respondents based upon state law claims.

JURISDICTION

Appellate jurisdiction in the United States District Court was granted under 28 U.S.C §158(a)(1) and (c)(1)(A) of the three U.S. Bankruptcy Court Orders at issue. Appellate jurisdiction in the Tenth Circuit was granted under 28 U.S.C. §158(d). Timely Notices of Appeal to the U.S. District Court for the District of Utah were filed April 9, 2004, June 2, 2004, and September 23, 2004. Final orders affirming the Bankruptcy Court were entered on November 4, 2004, June 13, 2005 with reconsideration denied August 2, 2005, and September 28, 2005. Notices of Appeal to the Tenth Circuit

Court of Appeals were filed November 15, 2004, August 22, 2005, and October 5, 2005. This is an appeal of the final consolidated Order and Judgment entered May 11, 2006, for all three Club v. Morton, 405 U.S. 727 (1972).
appeals in the Tenth Circuit Court of Appeals. That Order disposed of all the parties' claims. A Petition for Rehearing *En Banc* was filed and an order denying the Petition for Rehearing was entered June 7, 2006.

Appellate jurisdiction in the United States District Court was granted under 28 U.S.C §158(a)(1) and (c)(1)(A). Appellate jurisdiction in the Tenth Circuit Court of Appeals was granted under 28 U.S.C. §158(d). Review of the Tenth Circuit Court of Appeals decision in the United States Supreme Court is permitted by writ of certiorari under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Constitution Article III, § 2 - "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ."
U.S. Constitution Fifth Amendment: ". . .No person shall . . . be deprived of life, liberty, or property, without due process of law."
11 U.S.C. §101(41) - text in Appendix
11 U.S.C. §109(b) - text in Appendix
11 U.S.C. § 323(a) - text in Appendix
11 U.S.C. § 541(a) - text in Appendix
11 U.S.C. §§554(c) - text in Appendix
11 U.S.C. §726(a)(6) - text in Appendix
28 U.S.C §158(a)(1) and (c)(1)(A) - text in Appendix
28 U.S.C. §158(d) - text in Appendix
28 U.S.C. §1254 - text in Appendix
28 U.S.C. §1654 - text in Appendix
Nevada Revised Statute §78.115 - text in Appendix

Nevada Revised Statute §78.120 - text in Appendix
Nevada Revised Statute §78.139(5) - text in Appendix
Utah Code Annotated §43-1-2 - text in Appendix
Bankr. Rule 9010 - text in Appendix

STATEMENT OF THE CASE

The basis of this proceeding is that a disgruntled spiteful creditor who was originally owed less than $10,000 in principal, who maliciously conspired with his attorney to destroy a business and went to any lengths of fraud, distortions, misrepresentations, manipulations and deceit to do so. The creditor through a subterfuge based on fabricated facts created from thin air by his counsel, claimed to have become an owner of shares in a corporation and that he could thereby exercise management of the corporation to force its dissolution. The creditor was a renegade interloper with no claim to legitimacy claiming to have taken over a corporation and for which they would lead courts to believe the corporation cannot seek redress. The corporation and its management and actual owner have been denied the opportunity to have counsel represent them or to have standing to dispute this imposter's sabotage and destruction of the corporation. The lower courts have blindly and completely ignored certain stark realities in the case.

Log Furniture, Inc. was a log furniture manufacturing and selling company organized in 1999 as a Nevada private corporation, doing business in Utah. When formed, all 1,000,000 shares of stock which were both issued and certificated were owned by Cari Allen. In direct exchange for title to some real estate, Cari Allen sold her stock to Golden Meadows
Properties on July 21, 2000. A trade debt was incurred for supplies to Respondent Granite Stone's predecessor in interest, Machinery Hardware and Supply, during 2001 which was unpaid and resulted in a state court collection action where a judgment for approximately $17,000 was entered in 2002 against Log Furniture and Cari Allen personally. This entire set of appeals arises from Machinery Hardware and Supply's attempts to execute upon their $17,000 judgment against Cari Allen. They mistakenly and deceptively claim Cari Allen owned the stock in Log Furniture, Inc. and that by

conducting a sheriff's execution sale without ever even trying to physically locate or attach the stock certificate itself they nonetheless magically obtained ownership of the stock then owned by Golden Meadows. Solely because they assert they purchased stock, which Cari Allen no longer owned, they claimed to become the sole shareholder of Log Furniture, Inc. and then forced it into a Chapter 7 liquidation bankruptcy proceeding. This was done despite a shareholder's inability to do so under governing Nevada corporation statutes. Each of the three Tenth Circuit Court appeals arise from Petitioners' thus far futile efforts simply have their day in court to - 1) have a court fully and properly and actually consider the facts about the ownership of the stock and transfer of the certificate which was never levied upon and law applicable to these facts and 2) shareholder inability to place corporations in bankruptcy. Not one of the lower court decisions ever get to the factual or legal substance of the stock certificate transfer dispute, other than Bankruptcy Judge Thurman in a Temporary Restraining Order hearing ruling in Petitioners' favor therein. Not a single other judge in any of the myriad proceedings either received evidence respecting the transfer, delivery and possession of Log Furniture, Inc.'s only issued stock certificate (or even acknowledge the existence thereof), nor applied governing statutes about title to stock certificates upon endorsement and delivery of the certificate, necessity of attachment of negotiable instruments for execution sales which did not occur, etc.

The basic critical point is this - The Chapter 7 bankruptcy filing for the Nevada corporation by an entity claiming to be a shareholder is not an authorized filing under any version of facts or law. Shareholders are not authorized to file bankruptcy petitions under Nevada nor most states' laws. The Petition is *facially* defective. The Board of Directors of Log Furniture, Inc., which is the *only* authority to authorize a bankruptcy petition under Nevada law, and the actual shareholder, asserts this Chapter 7 filing is both facially and substantively defective. The entity claiming to be a shareholder on the bankruptcy petition filing is not and could not have ever been a shareholder. It claimed to have acquired shares from a person who did not own them. It based its claim to be shareholder in reliance on orders it had obtained with erroneous and misleading content in state court proceedings which were set aside. The

Bankruptcy Court, without ever conducting an evidentiary hearing, issued orders explicitly relying on the set aside state court orders which now Respondent Granite Stone claims prevents any determination or examination of the issue. Not one court has received the negotiated and endorsed stock certificate into evidence. The Bankruptcy Court is under an *affirmative duty* to ascertain that the persons claiming to have authority to file on behalf of a corporation actually have the authority to do so, whether brought to the Court's attention by a creditor, the actual authorized parties, the corporation's management, another shareholder, a trustee, the U.S. Trustee, or any party who's rights may be affected, as well as *sua sponte*. Yet in violation of the right to due process before depriving a legal person of property, this has never been done.

After Granite Stone filed the chapter 7 petition purporting to act on behalf of the corporation, the corporation and its shareholder filed the Adversary Proceeding herein challenging the propriety of the filing on the bases of lack of ownership of the stock by the interloper imposter shareholder, Granite Stone, L.C., and an abject failure to comply with Nevada corporate law and seeking damages for such acts. Nevada law requires management of Nevada corporations, much less forcing dissolution thereof, to be solely exercised by their boards of directors, *not shareholders*.

In the only evidentiary hearing ever conducted in any court anywhere regarding the facts of this case, on November 7, 2003, Bankruptcy Court Judge William T. Thurman sitting in place of the judge assigned to the case (Bankruptcy Court Chief Judge Glen E. Clark) who was out of town, received sworn testimony and documentary evidence under the Rules of Evidence. After over four hours of testimony, Judge Thurman found that the stock ownership was a question "going to the merits . . . so serious, substantial, difficult and doubtful as to make the issue ripe for litigation and *deserving of more deliberate investigation* [emphasis added]" and issued a Temporary Restraining Order restraining the interim chapter 7 trustee from liquidating the corporation. Not even the amount of investigation explored by the four hour evidentiary hearing before Judge Thurman has since occurred, much less a more intensive hearing. No full litigation, no evidentiary hearing, no more deliberate investigation has ever occurred.

The hearing to extend that Temporary Restraining Order into a preliminary injunction had been scheduled with a Motion to Dismiss the main bankruptcy case on November 20, 2004, before Judge Clark. Granite Stone represented at that hearing that State Court Judge Tyrone Medley in the collection action in the State of Utah Third District Court had already determined that Granite Stone acquired the stock at their execution sale, that such determination was binding under collateral estoppel in the Bankruptcy Court and the Bankruptcy Court should abstain from considering the issue. Judge Clark received no evidence and explicitly reciting reliance on the Medley Orders, denied the Motion to Dismiss asserting the corporate debtor did not have standing to challenge the imposter filing. There was no evidentiary hearing nor order respecting the motion to enter a preliminary injunction and indeed, no order has ever been entered resulting from that hearing.

That ruling was brought before the U.S. District Court for the District of Utah in Case 2:03CV1030. Granite Stone argued again that the stock ownership issue had already been determined by state court Judge Medley and requested that clarification of his ruling be made therein as to which all parties agreed. The District Court after hearing on November 24, 2003, entered a Stipulated Temporary Restraining Order mirroring that issued by Bankruptcy Judge Thurman and reserving the determination of the stock ownership claim to state court Judge Medley. Judge Dee Benson subsequently granted leave for an interlocutory appeal. The Court however on May 14, 2004, rescinded the Order granting the interlocutory appeal, dissolved the Temporary Restraining Order and dismissed the appeal. The corporation had continued to operate until that time.

Following the November 20, 2003, Bankruptcy Court ruling that the corporation did not have standing to challenge an imposter shareholder acting in its behalf, and the stipulation on the record and entered in the Stipulated Temporary Restraining Order that stock ownership be clarified in state court, Golden Meadows Properties, L.C. filed a Motion to Dismiss in its own right based upon its standing as the actual shareholder regarding the lack of compliance with Nevada corporate law. Granite Stone again argued that Judge Medley had already determined the stock ownership issue

and that the Bankruptcy Court was bound thereby. Bankruptcy Judge Clark, without receiving any testimony or documentary evidence submitted under the Rules of Evidence and stating on the record that he had received no evidence, explicitly reciting the Medley Orders and their preclusive effect under the Rooker-Feldman doctrine and reading Nevada law to allow shareholders to perform management, denied that Motion to Dismiss on January 5, 2004, with its Order entered March 30, 2004. Judge Clark's denial of the Motion to Dismiss was the subject of the appeal in Tenth Circuit Court Case No. 05-4228.

The state court Judge Medley Orders and any implication which Granite Stone had attributed to them in the several hearings referenced were vacated, set aside and rescinded by Judge Medley on March 6, 2004, ruling that any such finding or inference that he had already determined ownership of the stock was untrue, unwarranted and worked an injustice. However, the deceptive and misleading premise urged by counsel for Respondents had already formed the premise for the Bankruptcy Court's determination of ownership from which it refused to review the issue.

A pre-trial scheduling conference was scheduled before Judge Clark for the Adversary Proceeding on March 30, 2004. Appellants filed a parties' planning meeting report at which Granite Stone had refused to participate. After reiterating that only the trustee could act on behalf of the debtor as if they were the same, Judge Clark recited Tenth Circuit case law regarding management of dockets and dismissed the Adversary Proceeding with prejudice on April 20, 2004. There was a final Order Granting Motion to Dismiss Improper Appeal and Affirming Bankruptcy Court Order Dismissing Adversary Proceeding With Prejudice entered in the United States District Court November 4, 2004. That Order affirmed the Dismissal entered in the United States Bankruptcy Court for the District of Utah in Adversary Proceeding No. 04P-2497GEC. Review of that dismissal and its affirmation by the U.S. District Court was the basis for the appeal in Tenth Circuit Court Case No.04-2476.

ARGUMENT

1) A corporate Chapter 7 bankruptcy debtor has a right to counsel

in its own bankruptcy liquidation proceeding.

The Tenth Circuit panel opinion from a panel consisting of Judges Porfilio, Hartz and Lucero departed from the accepted and usual course of judicial proceedings and has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The panel, authored by Judge Porfillo, elected to make an astonishingly injudicious statement departing from accepted, usual judicial proceedings in stating that, "What these three cases now present to us is a tangled, nearly indecipherable mess of repeated and convoluted contentions engulfed in more smoke than a Friday boys-night-out poker jamboree." Such language is more Mark Twain than scholarly legal analysis worthy of a United States Court of Appeals upon which society depends and is in need of.

Log Furniture, Inc. as a debtor may represent itself in its own bankruptcy proceeding. A corporation may only appear through counsel. The Chapter 7 Trustee of the estate is not the debtor, Log Furniture, Inc., and represents the estate, not the debtor, whether in bankruptcy court or any other court. An "estate" is created each time a bankruptcy proceeding is commenced. 11 U.S.C. § 541(a). Like a corporation or a trust, a bankruptcy estate is a distinct legal entity, In re Swift Aire Lines, Inc., 30 B.R. 490, 495 (9th Cir. BAP 1983); In re Dow Corning Corp., 270 B.R. to 393, 398-99 (Bankr.E.D.Mich.2001); In re Roy Stanley, Inc., 217 B.R. 23, 25 (Bankr.N.D.N.Y.1997); In re SeaEscape Cruises, Ltd., 201 B.R. 321, 323 (Bankr.S.D.Fla.1996). The bankruptcy estate exists apart from the debtor. It acts through its legal representative, the bankruptcy trustee, 11 U.S.C. § 323(a). The bankruptcy estate is the foundation upon which the entire bankruptcy process rests. When the bankruptcy trustee acts, she acts as the representative of the bankruptcy estate, not as a representative of the debtor. The Trustee is not the debtor. "The debtors and the estate are not interchangeable." - In re Doemling, 127 B.R. 954 (W.D.Pa.1991). Neither the Trustee nor counsel for the Trustee is counsel retained by the Debtor corporation. While the Trustee can appear in his or her own stead, such representation of the estate does not substitute for the debtor. Counsel for the Trustee is not counsel for the Debtor in this

case any more than in any other Chapter 7 proceeding.

Log Furniture has a constitutional and statutory right to appear independently in its own stead through counsel. This is fundamentally critical where the very jurisdiction upon which appointment of a trustee is premised, is being challenged. The law is well established that a corporation may appear and defend its interests, *see* In re T.Craft Aviation Service, Inc., 187 B.R. 703 (Bankr. N.D. Okl. 1995); In re B-K of Kansas, Inc., 82 B.R. 135 (Bankr. D. Kan. 1988). There are fundamental fifth amendment due process rights of a corporation to be able to both appear and be represented by counsel. This would seem to be self evident, but as explained in Reliable Elec. Co., Inc. v. Olson, 726 F.2d 620 (10th Cir. 1984), "A fundamental right guaranteed by the Constitution is the opportunity to be heard when a property interest is at stake."

That right and how it is maintained is set forth by statute at 28 U.S.C. §1654:

> Appearance personally or by counsel. In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

It is rather disingenuous, if not bizarre, to suggest Log Furniture, Inc. is not a party to its own bankruptcy proceeding. Bankr. Rule 9010 similarly states:

> Representation and Appearances; Powers of Attorney (a) Authority to act personally or by attorney, A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authori zed to practice in the court, and (2) perform any act not con stituting the practice of law, by an authorized agent, attorney in fact, or proxy.

As set forth in Harrison v. Wahatoyas, L.L.C., 253 F.3d 552 (10th Cir. 2001) - "The rule is well established that a corporation can appear in a court of record only by an attorney at law." This rule is clear and easy to understand yet ignored by the lower courts including the three judge panel of the Tenth Circuit which issued the rule to begin with.

2) A corporate Chapter 7 bankruptcy debtor and/or its board of directors and/or its chief executive officer have standing to challenge a bankruptcy filing purporting to be made on the corporation's behalf by an entity purporting to be (but whose status as such is disputed) a stockholder.

Log Furniture does not claim that it is unaffected by a bankruptcy. However, it does claim 1) that a bankruptcy proceeding does not eliminate corporate existence, 2) that it is entitled to stand before the courts, and 3) that it may proclaim "This Granite Stone is an imposter who does not own me and does not have authority to act for me." This is not a claim whatsoever that Log Furniture is a separate entity that exists "outside of the bankruptcy, " as suggested by the Tenth Circuit panel opinion. The critical question is whether it is the entity that is in the bankruptcy and who can speak for it. The panel opinion reference to Cari Allen as the "former management" is at odds with the law in that if the bankruptcy petition was invalidly filed by a non-shareholder (or even if acting as a shareholder), then the protesting management is the "current lawful" management.

Public policy and common sense mandates that a corporation have standing to challenge a wrongfully filed bankruptcy petition purportedly made on its behalf which subjects it to a bankruptcy liquidation and dissolution. Or the interest of its lawful management to challenge such filing made without actual or apparent legal authority. A Chapter 7 proceeding has the very purpose to dismember and liquidate the corporation's assets to pay creditors. "Who" can do that is the first question in a petition. This is a classic form of standing long recognized by the United States Supreme Court, to wit: a pecuniary interest, Sierra Club v. Morton, 405 U.S. 727 (1972).

Article III, § 2, of the U.S. Constitution provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treatics made, or which shall be made, under their Authority . . . ." It is clear that the cause of action herein is one which arises under the "laws of the United States." Standing is a concept derived from the

"case or controversies" requirement of Article III of the Constitution, In re Yellow Cab Cooperative Association, 132 F.3d 591 (10th Cir. 1997). It's purpose is to assure that a litigant has an actual stake in an outcome so that the Courts are not used as sounding boards for expressions of public policy as was often attempted with respect to anti-war, civil rights, church/state matters and environmental claims in the 1960's and 1970's, *see* Simon v. Eastern Kentucky Welfare Rights Organization *et al.*, 426 U.S. 26 (1976); Schlesinger v. Reservists Committee to Stop War *et al.*, 418 U.S. 208 (1974); Flast *et al.* v. Cohen, 392 U.S. 83 (1968). The modern expression of the doctrine arose in Baker v. Carr, 369 U.S. 186 (1962), which establishes the elements of standing under Article III in Federal Court as follows:

Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law. . . . It would not be necessary to decide whether appellants' allegations . . . will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it. They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," Coleman v. Miller, 307 U.S., at 438, not merely a claim of "the right, possessed by every citizen, to require that the Government be administered according to law . . . ." Fairchild v. Hughes, 258 U.S. 126, 129; compare Leser v. Garnett, 258 U.S. 130. They are entitled to a hearing and to the District Court's decision on their claims. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163.

Cari Allen had individual standing because she owned a right to redeem her shares of stock which had been sold to Golden Meadows properties upon repayment of her own and Log Furniture's loans. Cari Allen as Director of Log Furniture, Inc. has statutory standing not in an individual capacity but precisely because of her position as director under Nevada Revised Statute §78.120-"the

board of directors has full control over the affairs of the corporation. . .The business of every corporation must be managed by a board of directors or trustees" and more importantly Nevada Revised Statute §78.139(5), "Directors may resist a change or potential change in control of the corporation if the directors by a majority vote of a quorum determine that the change or potential change is opposed to or not in the best interest of the corporation." The public interest in maintaining commerce and the corporation's "right to continue business" is a fundamental property interest recognized both by case law, Tri-State Generation and Transmission Asso. Inc. v. Shoshone River Power, Inc., 805 F.2d 351 (10th Cir. 1986); John B. Hull, Inc. v. Waterbury Petroleum Products, Inc., 558 F.2d 24 (2d Cir. 1978); and by Bankruptcy Judge Thurman's Order entered in this very proceeding. The continuation of its corporate existence is inherently a vital critical property interest at stake for the lawful corporation.

If the lawful managers of the corporation, lawfully installed pursuant to statute and bylaws, do not have standing to challenge an imposter claiming to proceed on the corporation's behalf, the question is better put - then who does? Would the Board of Directors or CEO of IBM or Microsoft be prevented from challenging some John Q. Smith character off the street who files a Chapter 7 petition claiming to be acting for IBM or Microsoft? Should Log Furniture, Inc. be denied the same due process because it is a small business?

The panel opinion curiously cites Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985), yet rules directly contrary to the explicit language therein. The panel's argument was in the section claiming that Log Furniture has no *alter ego* existing outside bankruptcy and is cited for the proposition that "[T]hose assets, including the claims asserted by the attorneys and Allen, are within the sole control of the Trustee in Bankruptcy whose duty it is to 'collect the property of the estate and reduce it to cash.'" Yet that argument in the context of whether corporate management had standing to argue on behalf of a corporation wrongfully filed in bankruptcy and whether the corporation continues to exist as a legal entity *inside* a wrongfully filed or any other bankruptcy, is in direct conflict with the actual language used by the U.S. Supreme Court:

As even this brief and incomplete list should indicate, the

> Bankruptcy Code gives the trustee wide-ranging management authority over the debtor. See 2 Collier on Bankruptcy ¶ 323.01 (15th ed. 1985). In contrast, ***the powers of the debtor's directors are severely limited***. Their role is to turn over the corporation's property to the trustee and to provide certain information to the trustee and to the creditors. §§ 521, 343. Congress contemplated that when a trustee is appointed, he assumes control of the business, and the debtor's directors are "completely ousted." See H.R.Rep. No. 95-595, pp. 220-221 (1977). In light of the Code's allocation of responsibilities, it is clear that the trustee plays the role most closely analogous to that of a solvent corporation's management. Given that the debtor's directors retain ***virtually no management powers***, they should not exercise the traditional management function of controlling the corporation's attorney-client privilege, see supra, at 1991, unless a contrary arrangement would be inconsistent with policies of the bankruptcy laws. [Emphasis added].

What the panel ignored is that in the decision which was about exercise of waiving attorney/client privilege and not standing, the Supreme Court recognized two things - continued existence of management and therefore, the corporation, and their ability to conduct certain shell functions. It said "severely limited" ***NOT*** "eliminated." It said "virtually no management powers" ***NOT*** "none." This panel's holding to the contrary of exactly what the Supreme Court held is at odds with this framework of post-bankruptcy corporate existence outlined by the U.S. Supreme Court and the plain language of the Bankruptcy Code .

The Code clearly specifically defines a person entitled to file bankruptcy in 11 U.S.C. §101(41) as being, "'person' includes individual, partnership, and corporation." 11 U.S.C. §109(b) states "a person may be a debtor under chapter 7 of this title (with some nonapplicable exceptions)." 11 U.S.C. §§554(c) and 726(a)(6) by providing that if there is an excess of assets after administration, they be distributed to the debtor, recognize the continued existence of a debtor - any debtor - *after* a liquidation bankruptcy. The Code could not make a nonsense and meaningless requirement that assets be either abandoned to a debtor or Other aspects of the panel

decision at odds with U.S. Supreme Court precedent is that the District Court TRO reserving determination of the stock ownership to the state court which was dissolved on May 26, 2004 was nonetheless in effect and required to be obeyed when it was in effect from November 24, 2003, to May 26, 2004, and the panel decision that it was of no effect when it was in effect is wrong and conflicts with Wiswall v. Sampson, 55 U.S. 52 (1852). The holding that the bankruptcy court need not determine the authority of the persons purporting to act on behalf of a corporate entity under governing state law clearly conflicts with Price v. Gurney, 323 U.S. 696 (1944).

3) A stockholder (whose status as stockholder is disputed) cannot place a Nevada corporation into bankruptcy

The conclusions reached by the U.S. Bankruptcy Court for the District of Utah, the U.S. District Court for the District of Utah and the U.S. Tenth Circuit Court of Appeals panel that Granite Stone was a stockholder of Log Furniture, Inc. and, as such, was authorized under Nevada state law to place the corporation into bankruptcy constitutes decisions in conflict with decisions of other United States court of appeals and of the United States Supreme Court on the same important matter.

There was no resolution of the Board of Directors of Log Furniture, Inc. authorizing a bankruptcy filing. That fact is unchallenged that Granite Stone, L.C., a Utah limited liability company, claims to have authorized the filing as a shareholder (as assignee of creditor Machinery, Hardware & Supply, Inc. [MHS]). Although whether Granite Stone is a shareholder with voting rights is very much in dispute, its shareholder resolution does not even purport to be an action by the corporation's Board of Directors. That defect is an insurmountable bar. The resolution further purports to effect some legal nullities under Nevada law which defeat the Petition on its face.

Nevada Revised Statute §78.120 mandates that the business of the corporation be conducted through the directors - "The business of every corporation ***must*** be managed by a board of directors or trustees, ***all of whom must be natural persons who are at least***

18 years of age [emphasis added]." Nevada Revised Statute §78.115 mandates that there be at least one director - "A corporation must have at least one director...[emphasis added]" Consequently, any person claiming to have "eliminated" a board of directors of a Nevada corporation would be making a false representation. Nevada law requires the a director be a "natural person" so, apart from the elimination of the existing board being a nullity at law, appointment of a limited liability company as a director is also a nullity. There is not a "natural person" who filed the Petition. It was signed by David Harris as "President of Machinery Hardware & Supply, Manager of Granite Stone, L.C." i.e. the CEO of a corporation acting as manager for a limited liability company which purports to act as a shareholder. Harris does not purport himself to be an officer or director or shareholder of Log Furniture, Inc. This violates the public policy established by the Nevada legislature and the plain language of the Nevada statutes.

The determination of whether a corporate bankruptcy petition is authorized is jurisdictional. In Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994), was an action amazingly similar to the present case where pledged stock had gone into default and the issue was who had the voting rights, the Court stated:

> [W]e believe it *improper* for the bankruptcy court to assume jurisdiction over a case simply because there is debt involved; in short, there first must be valid jurisdiction over the matter before a bankruptcy court can proceed. In the absence of a valid petition, a bankruptcy court has no basis upon which to dispose of a corporation's assets or resolve its debt status. [Emphasis added].

As stated in Chitex Communications, Inc. v. Kramer, 169 B.R. 587, 589 (S.D.TX 1994) in an action brought by the wife of the president as being a party whose rights may be affected, "The Supreme Court long ago decided that authority to file a bankruptcy petition is found in state law." This well-established, long standing principle was determined in Price v. Gurney, 324 U.S. 100 (1045) finding that stockholders have no authority generally to commence a bankruptcy proceeding:

The District Court in passing on petitions filed by corporations under Chapter X must of course determine whether they are

filed by those who have authority so to act. In absence of federal incorporation, that authority finds its source in local law. If the District Court finds that those who purport to act on behalf of the corporation have not been granted authority by local law to institute the proceedings, ***it has no alternative but to dismiss the petition***. It is not enough that those who seek to speak for the corporation may have the right to obtain that authority. . . But nowhere is there any indication that Congress bestowed on the bankruptcy court jurisdiction to determine that those who in fact do not have the authority to speak for the corporation as a matter of local law are entitled to be given such authority and therefore should be empowered to file a petition on behalf of the corporation. [Emphasis added].

Congress made no changes to this precedent in the Bankruptcy Code and Price has been routinely interpeted and applied to that effect by bankruptcy courts: *See* In re Industrial Concerns, 209 B.R. 609 (Bk. W.D.Pa. 2003) - dismissing action by 50% of shareholders under nearly identical state corporation statutes as applicable herein, finding:

> The decision to initiate a voluntary bankruptcy case on behalf of a corporation must be made by those persons having the power of managing the corporation. The power to manage a business corporation resides in the board of directors.

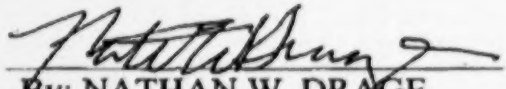
This U.S. Supreme Court precedent is consistently and uniformly followed in all jurisdictions except now in Utah and the Tenth Circuit and is oft reiterated by all courts, *see also* In re Farrell Realty Co., 10 F.2d 612, 614 (2nd Cir. 1925); In re In re Wet-Jet International, Inc., 235 B.R. 142 (D.Mass. 1999); In re Yellow Cab Co-op. Assn., 144 B.R. 505 (D.Colo 1992); Quarter Moon Livestock Co., 116 B.R. 775, 778 (Bank. D.ID 1990); In re I.D. Craig Service Corp., 118 B.R. 335 (Bankr. W.D.Pa. 1990); In re Giggles Restaurant, Inc., 103 B.R. 549, 553 (Bankr. D.N.J. 1989); In re Stavola/Manson Elec. Co., Inc., 94 B.R. 21, 24 (Bankr. D. Conn. 1988); In re King Brand Food Products, Inc., 52 B.R. 109 (Bankr. Fla. 1985); In re Acoustic Fibers Sound Systems, Inc., 20 BR 769 (Bankr. S.D. Ind. 1982).

Absolute title to the stock was transferred to Golden Meadows, L.C. on July 21, 2000, under Utah law. The stock certificate, a

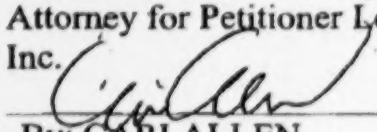
negotiable instrument, endorsed by Cari Allen on July 21, 2000 and delivered and remained in the possession of Golden Meadows Properties at issue in this proceeding, which was never examined or discussed by one single lower Federal court, which says on its face the explicit notation "I hereby sell, assign and transfer unto Golden Meadows Properties, LLC 1,000,000 shares represented by the within Certificate." No Federal court has ever reconciled this fact of record with the plain language of Utah Code Annotated §43-1-2 which flatly and unequivocally states "Title to any security receipt. . . may be transferred by delivery by any person in possession of the same. . . A person to whom title is so transferred . . .shall have absolute title." Under Utah law, title to the stock was transferred to Golden Meadows Properties, L.C. when Ms. Allen endorsed over the certificate and had it delivered on July 21, 2000. To the same effect, *see also* Nevada Revised Statutes 104.3203 Transfer of instrument; rights acquired by transfer.

With the exception of Bankruptcy Judge Thurman in the TRO hearing, who tried to set the proper stage for Bankruptcy Judge Clark to determine ownership of the corporation and ability to act for it, none of the Federal judges have grappled with the facts that determine whether the petition was properly filed to begin with. A corporation was dismembered by deceit and due process to it denied. This Court should not countenance the shallow and cursory, disdainful treatment by the lower courts given to a corporation, the denial to it of a right to counsel and ignoring the substance of its and its lawful management's disputes over the improper invocation of Federal Bankruptcy Court jurisdiction for the malicious purpose to destroy the corporation and defeat creditors rather than assure their payment through ongoing business.

Respectfully submitted,



By: NATHAN W. DRAGE
Attorney for Petitioner Log Furniture, Inc.



By: CARI ALLEN
Petitioner *Pro Se*

Supreme Court, U.S.
FILED
SEP 5 - 2006
OFFICE OF THE CLERK

No. 06-486

In The Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,
Petitioners,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,
Respondents.

Appendix to Petition for Writ of Certiorari To The Supreme Court of the United States

APPENDIX

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TABLE OF CONTENTS

1. March 30, 2004 Order Case No. 03-838622.....1-4

2. April 20, 2004 Order Case No. 03-2466.....5-6

3. July 28, 2004 Order Case No. 04-2497.....7-9

4. November 4, 2004 Order Case No. 2:04cv00897PGC.....10-11

5. June 13, 2005 Order Case No. 2:04cv00505.....12-16

6. July 22, 2005 Order Case No. 2:04cv00505.....17-18

7. September 28, 2005 Case No. 2:04cv00369.....18-19

8. May 11, 2006 Case No. 05-4228, 04-4276, 05-4260.....19-25

9. June 5, 2006 Case No. 05-4228, 04-4276, 05-4260.....26-28

10. 11 U.S.C. § 101(41).....29

11 U.S.C. § 109.....29-30

12 U.S.C. § 323. 30

11 U.S.C. § 541. 30-31

11 U.S.C. § 554. 31

11 U.S.C. § 726 31

11 U.S.C. § 158. 31-32

28 U.S.C. § 1254.....32

28 U.S.C. § 1654 32

NRS 78.115.....32

NRS §78.120 33
NRS 78.139.....33
UTAH CODE ANN. 43-1-2.....34
BANKRUPTCY RULE 9010-1.....35

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re	)	
	)	
Log Furniture, inc.,	)	Bankruptcy Case
	)	No. 03C-38622
Debtor.	)	Chapter 7
	)	
	)	ORDER DENYING AMENDED
	)	MOTION TO DISMISS

The Amended Motion of Golden Meadows Properties, LLC ("Golden Meadows") came before the court on January 5, 2004. Ralph Petty appeared for Golden Meadows and Nupetco Associates; Steven W. Call appeared for Granite Stone, LC and Machinery Hardware Supply, Inc.; Howard Johnson appeared for Log Furniture management; Bryan Booth and Robert Prince appeared for Depot Associates, LLC; Reid Lambert appeared for Elizabeth Loveridge, the interim Chapter 7 trustee; Peter Kuhn appeared for the United States Trustee, and David Sorensen appeared fo the Internal Revenue Service. The Court, having considered the pleadings and documents on file and the arguments of counsel, denies the motion to dismiss based upon the following:

1. Log Furniture is a Nevada corporation organized December 2, 1999.
2. Carl Allen was the initial 100.0% shareholder of the stock of Log Furniture, Inc., (the "stock").
3. On or around July 21, 2000, Cari Allen pledged her shares of stock to Golden Meadows as security for a Trust Deed Note.
4. Machinery Hardware & Supply, Inc., ("Machinery Hardware) is a Utah corporation which ran an open account with Log Furniture, Inc. The open account was personally guaranteed by Cari Allen.
5. The open account with Log Furniture, Inc., went into default and Machinery Hardware obtained a judgment against Log Furniture, Inc. and Cari Allen personally.
6. On June 7, 2003 Machinery Hardware served a Writ of Execution on Cari Allen attaching all of Cari Allen's interest in property including any stock or corporations.
7. Machinery Hardware assigned its interest in its judgment and the stock to Granite Stone.
8. An execution on the stock was made in Third District Court for the State of Utah on or around June 17, 2003. in favor of Machinery Hardware or its assignee, Granite Stone.
9. On June 24, 2003, Golden Meadows caused a Notice of Default with respect to the pledged stock to be delivered to Cari Allen. The default was not cured within 7 days.
10. Golden Meadows contends that as a result of the pledge and default, it obtained the voting rights in the stock.
11. On September 10, 2003, Granite Stone caused to be conducted a Sheriffs sale of Cari Allen's personal property, which property sold for a five hundred dollar credit bid.
12. Golden Meadows argues that because it had served the Notice of Default upon Cari Allen and the default had not been cured within 7 days, Granite Stone took the stock without any right to vote the stock, and that without the right to vote the stock, Granite Stone had no authority to file the bankruptcy petition of Log Furniture.

The only language in the pledge agreement relied upon by Golden Meadows with respect to voting rights is found in the f

Final sentence (the "sentence") of the pledge agreement which provides, "[n]othing in this agreement shall diminish or impede the ability of the undersigned to vote the pledged stock or to operate Log Furniture until such time as there may be a default under the terms of the trust deed note and trust deed and the undersigned have been given seven days written notice of default."

14. The sentence is not a creditor's remedy.

15. The sentence does nothing more than guarantee that Cari Allen's voting rights and the right of present management to operate the business will not be diminished or impeded.

16. The sentence provides no remedy for a creditor on default.

17. Forfeiture of voting rights and the loss of the right to operate ones business are both drastic remedies that require specific language affirmatively providing for such remedies.

18. There is no remedy in the pledge agreement that provides for forfeiture of voting rights or for the loss of the right to operate ones business.

19. The pledge agreement is silent with regard to a creditor's remedy upon default.

20. Whether or not the execution sale sold the stock subject to a Claim of Golden West is irrelevant to the Granite Stone's voting rights on the stock.

Nevada State Law

1. Golden Meadows argues that Granite Stone was not properly authorized under Nevada state law to cause Log Furniture's bankruptcy petition to be filed citing to Nevada Revised Statute § 78-115.

2. Granite Stone indicates that Nevada Revised Statute § 78-320 allows shareholders to take action by written consent.

3. The Court finds that two Nevada Revised Statutes appear to conflict with one another

4. When two statutes are capable of coexistence, it is the court's duty, absent a clearly expressed congressional

intention to the contrary, to regard each as effective. Even where two statutes are not entirely harmonious, courts must, if possible, give effect to both, unless it is clear that the earlier statute was intended to be repealed. In re Duncan, 329 F.3d 1195 (10th Cir. 2003).

5. Nevada Revised Statute § 78-115, provides that the business of every corporation must be managed by a board of directors all of whom must be natural persons of at least 18 years of age and that all Nevada corporations must have at least one director.

6. Granite Stone in not a natural person over the age of 18 years of age.

7. Nevada Revised Statute § 78-320 refers to stockholders meetings not regularly called. It states that whenever all persons entitled to vote at any meeting whether directors, trustees or stockholders consent by a writing on the records of the meeting or filed with the secretary, at such meeting any business may be transacted which is not exempted from the written consent or consideration of which no objection for want of notice is made at that time.

8. Giving effect to both statutes, the Court finds that Nevada Revised Statute § 78-320 provides that stockholders may conduct business of a corporation.

9. Pursuant to Nevada Revised Statute § 78-322, Granite Stone, the sole stockholder of Log Furniture had the authority to file the Log Furniture bankruptcy petition.

10. The filing of the bankruptcy petition by Granite Stone was valid.

Based upon the above, it is hereby;

ORDERED that the Golden Meadows Motion to Dismiss is denied.

DATED this 30 of March, 2004

BY THE COURT

"s/ _____"

Glen E. Clark, Chief Judge
United States Bankruptcy Court

Order Submitted by:
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF UTAH, CENTRAL DIVISION

In Re: LOG FURNITURE, INC., Debtor. LOG FURNITURE, INC., GOLDEN MEADOWS PROPERTIES, LLC and NUPETCO ASSOCIATES, Plaintiffs/Counter-Defendants,	Case No. 03-38622 GEC (Chapter 7) Adversary Proceeding No. 03-2466
vs. GANITE STONE, LC, Defendant And Counter-Plaintiff, and MACHINERY &	**ORDER OF DISMISSAL**

HARDWARE SUPPLY, INC., DAVID HARRIS, STEVEN CALL, and ROBERT SWAN, trustee.

Defendants

A hearing came on before the Court on March 30, 2004 in the above captioned adversary proceeding. Steven W. Call and Steven C. Strong of Ray, Quinney & Nebeker appeared on behalf of defendants Granite Stone, L.C., Machinery & Hardware Supply, Inc., and David W. Harris. Stephen B. Mitchell of Burbidge and Mitchell appeared on behalf of defendant Steven W. Call Ralph Petty appeared on behalf of Golden Meadows Properties, LLC and Nupetco Associates. Howard P. Johnson appeared on behalf of the former management of Log Furniture, Inc. Robert Swan, who is the trustee in the case, did not appear at the hearing.

The Court having considered the present and prior proceedings before the Court in the above □captioned adversary proceeding and in the bankruptcy case, and having further considered the relief requested by the defendants at the hearing and based upon the findings, conclusions and determinations made this Court in such matters, and for other appropriate cause which appears in the record in this proceeding and the case, IT IS HEREBY:

ORDERED that this proceeding and the complaint filed on November 7, 2003, which commenced the proceeding,, and the amended complaint which was served upon the defendants and answered thereby
on or about January 23, 2004, are hereby dismissed with prejudice.

DATED this 20 day of April. 2004.

BY THE COURT:

"s/ _____ "
Glen E. Clark, Chief Judge

The below described is SIGNED
Dated: July 28, 2004 "s/_____"
GLEN E. CLARK
U.S. Bankruptcy Judge

Order Prepared and Submitted By:

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STEVEN W. CALL (5260)
STEVEN C. STRONG (6340)
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UNITED STATES BANKRUPTCY COURT FOR

THE DISTRICT OF UTAH CENTRAL DIVISION

In Re: LOG FURNITURE, INC., Debtor. LOG FURNITURE, INC., and CARI ALLEN Plaintiffs vs. STEVEN CALL; RAY QUINNEY & NEBEKER, GRANITE STONE, LC, MACHINERY & HARDWARE SUPPLY, DAVID HARRIS Defendants.	Case No. 03-38622 (Chapter 7) Adversary Proceeding No. 04-2497 **ORDER** The Honorable Glen E. Clark

On June 9, 2004, a hearing was held before the Court on the motions to dismiss filed by the defendants in the above-captioned adversary proceeding. Steven T. Waterman and Steven C. Strong of Ray, Quinney & Nebeker appeared on behalf of Granite Stone L.C., Machinery & Hardware Supply, Inc. and David W. Harris. Richard D. Burbidge of Burbidge & Mitchell appeared on behalf of defendants Steven W. Call and Ray Quinney & Nebeker. Elizabeth R.Loveridge, the duly appointed interim trustee of Log Furniture, Inc., appeared with her counsel, David R Williams of Woodbury & Kessler. Howard P. Johnson appeared at the hearing. Cari Allen, Plaintiff, appeared pro se.

The Court having considered the motions to dismiss which have been filed with the Court, the memoranda of points and authorities filed in support and opposition to the motions, and the Court's prior rulings in the main bankruptcy case and related adversary proceeding, and having made findings and conclusions upon the record and for good cause appearing,

IT IS HEREBY

ORDERED that all claims of Log Furniture, Inc. against the defendants are hereby dismissed with prejudice; and

ORDERED further that the claims in the complaint which allege, relate to, or arise from the allegations that the above referenced bankruptcy case was not lawfully filed, are barred by the doctrine of res judicata and arc hereby dismissed with prejudice; and

ORDERED that while nothing in this order alters any prior rulings made by the Bankruptcy Court in this case, nothing in this Order shall prejudice the rights of the Trustee because she was not a party to the adversary proceeding nor did she consent thereto; and

ORDERED further that this Court having dismissed with prejudice all claims which arise from, arise in, or relate to the bankruptcy filing and noting this Court's prior rulings and orders made on those matters are binding upon all Federal and State Courts under the doctrine of *res judicata*, the remaining claims, if any, of Cari Allen are remanded to the Third Judicial District Court, Salt Lake County, State of Utah: and

ORDERED further that this Order is final as to the matters relied upon and should be entered by the clerk of the Court as a

final order pursuant to Fed. R. Bankr. P. 7054(a) and Fed. R..Civ. P. 54(b), the Bankruptcy Court having determined that there is no just reason for delay because there is nothing remaining in the adversary proceeding to be adjudicated, the Bankruptcy Court having dismissed the claims as set forth above and having remanded any remaining state law claims of Cari Allen that do not pertain to the appropriateness of the bankruptcy filing, if any, to the State Court.

Dated this ____ day of July 2004.

HON. GLEN E. CLARK
Chief Judge, United States
Bankruptcy Court, District of Utah

Approved as to form:
WOODBURY & KESSLER
"s/ "
Elizabeth Loveridge
Reid Lambert
Attorneys for the Trustee

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. STEVEN CALL, et al., Appellees	ORDER GRANTING MOTION TO DISMISS IMPROPER APPEAL AND AFFIRMITNG BANKRUPTCY COURT ORDER DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE Case No. 2:04-CV -00897PGC

Appellee's Motion to Dismiss Improper Appeal is hereby GRANTED (#3-1). Attorney Howard P. Johnson filed the underlying Adversary Proceeding on behalf of Log Furniture, Inc., a Chapter 7 debtor. Cari Allen, formerly the sole shareholder of Log Furniture, Inc., joined as a *pro se* litigant. Chief Judge Clark of the bankruptcy court previously dismissed these claims with prejudice. His order has been appealed to this court. Appellee's have moved to dismiss the appeal, arguing that appellant's lack standing.

The claims asserted by Mr. Johnson are the property of the bankruptcy estate and are appropriately asserted only by the Trustee of the estate. 'Mr. Johnson has not been employed by the trustee and therefore has no standing to assert claims on behalf of the debtor corporation .

Chief Judge Clark has also previously ruled that any interests Ms. Allen had in Log Furniture, Inc. were sold prior to the bankruptcy petition. Because Ms. Allen holds no equitable or pecuniary interest in Log Furniture, Inc., she is not a "person

aggrieved" and has no standing to assert her claims in this case.[2]

Inasmuch as Chief Judge Clark's ruling on the Adversary Proceeding relied upon the lack of standing of the appellants, the court hereby also AFFIRMS his decision. The Clerk's Office is directed to close the case.

DATED this 4th day of November, 2004.

BY THE COURT:

"s/ _____"
Paul G. Cassell
United States District Judge

---

[1] *Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985)*

[2] *Holmes v. Silver Wings Avaiation, Inc., 881 F.2d 939, 940 (10th Cir 1989).*

IN THE UNITED STATES COURT FOR THE DISTRICT COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al.,, Appellees	ORDER Case No. 2:04cv00505
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-2466

Before the Court is an appeal brought by Log Furniture, Inc., represented by attorney Howard Johnson; Cari Allen, appearing pro se; and Golden Meadows, L.L.C.. The appeal is one of many proceedings arising out of the filing of a Chapter 7 bankruptcy petition on October 31, 2003. The petition was filed by appellee Granite Stone, L.C., on behalf of Log Furniture. The Court, having reviewed the briefing and relevant law, issues the following order.

I. BACKGROUND

The facts underlying this matter are generally as follows. Allen was the sole officer and sole shareholder of Log Furniture. In 2000, Golden Meadows, a creditor of Log Furniture, received a security interest in Allen's Log Furniture stock. In 2003, Machinery Hardware &Supply, Inc., another creditor of Log Furniture and Allen, obtained a judgment for unpaid debts and executed on the

stock. After purchasing the stock at a sheriff s sale, Machinery Hardware assigned its interest in the stock to Granite Stone, yet another creditor of Log Furniture.

As the sole shareholder of Log Furniture, Granite Stone took steps to remove Allen as the company's director. Having taken those steps, Granite Stone continued to act as the sole shareholder and initiated bankruptcy proceedings for Log Furniture. Appellants objected to the bankruptcy petition, arguing that Granite Stone lacked authority to file it. Appellants voiced their objections within the bankruptcy case and also within an adversary proceeding initiated in the bankruptcy court. The bankruptcy court ultimately rejected appellants' arguments, ruling that Granite Stone had authority to file the petition. Accordingly, the bankruptcy court dismissed the adversary proceeding and denied the various motions filed by appellants.

Appellants then filed numerous appeals and motions in both state and federal district courts, creating a fractured and complex procedural history for the overall dispute. The appeals and motions have all raised basically the same arguments and, to date, have been unsuccessful, yet appellants continue to strive for a different outcome. This particular appeal is from a judgment signed April 20, 2004 by the bankruptcy court which dismissed the adversary proceeding with prejudice.[1] In their joint brief, appellants raise numerous arguments as to why the dismissal was improper. Appellants' overarching argument remains that Granite Stone did not have authority to file a bankruptcy petition for Log Furniture.

II. ANALYSIS

A. Appellant Log Furniture

The Court finds that Log Furniture's appeal must be dismissed for lack of standing. The bankruptcy court ruled that Log Furniture, as represented by Howard Johnson, did not have standing

[1] The Court notes that Log Furniture and Cari Allen also appealed a judgment of the bankruptcy Court entered July 28, 2004, which likewise dismissed the adversary proceeding with prejudice. That appeal was addressed in the order for case number 2:04cv00897 (J. Cassell, November 4, 2004)

to raise any claims on behalf of Log Furniture because such claims belong to the bankruptcy estate and are appropriately asserted only by the trustee of the estate. The Court agrees with the bankruptcy court. This finding is consistent with Judge Cassell's Order dated November 4, 2004, in case number 2;04cv00897. It is also consistent with the Court's Order dated April 7, 2005, in case number 2:04cv00389. The appeal as filed by Log Furniture is accordingly DISMISSED.

B. Appellant Golden Meadows

Golden Meadows' appeal is based on an argument that it, rather than Granite Stone, had authority to control Log Furniture. Golden Meadows argues that it obtained stock and voting rights in Log Furniture via a pledge agreement executed by Allen in July 2000. At the time of the pledge, Allen was the sole shareholder of Log Furniture. The pledge agreement gave Golden Meadows a security interest in Allen's Log Furniture stock to secure a trust deed note and other debt owed by Allen. Allen eventually defaulted on the trust deed note, and Golden Meadows sent Allen a notice of default on June 21, 2003. By that time, Machinery Hardware had obtained a judgment against Log Furniture and Allen for unpaid debts. On June 7, 2003, Machinery Hardware served a writ of execution on Allen that attached various property interests, including her stock interests. Machinery Hardware later bid successfully on the stock interests at a sheriff's sale.

Golden Meadows argues that it obtained ownership of Allen's Log Furniture stock and Allen's attendant voting rights and ability to control Log Furniture upon Allen's failure to cure her default by June 28, 2003. To support its argument, Golden Meadows relies on the following provision of the pledge agreement: .

> [N]othing in this agreement shall diminish or impeded [sic] the ability of [Cari Allen] to vote the pledged stock or to operate Log Furniture, Inc., until such time as there may be a default under the terms of the Trust Deed Note and Trust Deed and [Cari Allen has] been given seven (7) days written notice of default.

The bankruptcy court reviewed the provision and found that it did not give Golden Meadows the interests and rights Golden Meadows claims. At a hearing on January 5, 2004, the bankruptcy court found as follows:

> The sentence relied upon [by Golden Meadows] is not a creditor's remedy. It does nothing more than guarantee that Cari Allen's voting rights and the right of present management to operate the business will not be diminished or impeded. The sentence provides no remedy for creditor on default. Forfeiture of voting rights, loss of right to operate one's business are both drastic remedies that require specific language affirmatively providing for such remedies. There are no such remedies provided for within the pledge of stock, and this court will not read such a remedy into the pledge of stock by application. Because the pledge of stock is silent regarding the creditor's remedies, then the creditor is left with its remedies under state law.

The bankruptcy court noted at the hearing that, in a related ruling dated July 23, 2003, Judge Medley of the Utah State Court found nothing in the provision precluding Machinery Hardware's execution on the stock: any "lienhold interest [Granite Meadows had] against such property would not preclude a junior creditor from executing on its junior leasehold interests against the property. "

The Court agrees with and affirms the bankruptcy court's rulings on this issue. While the pledge agreement may have given Golden Meadows a security interest in Allen's Log Furniture stock, it did not give Golden Meadows special creditor remedies such as an automatic transfer of ownership, voting rights, or the ability to control Log Furniture. Nor did the provision preclude Machinery Hardware from attaching and executing on the stock for whatever value it might be entitled to in light of Golden Meadows' competing interest. Golden Meadows' argument thus fails, and the relief requested by Golden Meadows in this appeal is DENIED.

C. Appellant Cari Allen

Cari Allen requested joinder in this appeal via a motion that the Court granted. The Court finds that Allen lacks standing as a former shareholder to make any challenges to the rulings of this case. This finding is consistent with the Court's Order dated April 7, 2005, in case number 2:04cv505 and with Judge Cassell's Order dated November 4, 2004, in case number 2:04cv00897.[2] Even assuming that Allen has standing as the allegedly wrongfully displaced director of Log Furniture, rather than a former shareholder, her claims still fail. The Court is unpersuaded by Allen's arguments that the execution on the stock was invalid, that Granite Stone violated Nevada corporate law, and that the bankruptcy court dismissed the adversary proceeding for pretextual reasons. The Court is likewise unpersuaded by Allen's argument that appellees committed fraud on the courts that would justify vacation of the bankruptcy court's rulings.[3] The relief requested by Allen in this appeal is therefore DENIED.[4]

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[2]The finding is also consistent with the opinion of theUtah Court of Appeals issued November 26, 2004. Granite Stone, L.C. v.Allen, 2004 Utah App. LEXIS 501, 2004 UT App 435. Allen argues that the Utah Court of Appeals declared in a more recent opinion that she does have standing. Allen v. Call, 2005 Utah App. LEXIS 222, 2005 UT App 223. In that opinion, however, the court held that Allen was in privity with Log Furniture for purposes of res judicata and was consequently barred from asserting certain claims. ID. At *4.

[3]The Court notes that Allen's fraud on the courts argument also failed in a proceeding before Judge Iwasaki of the Third Judicial District Court of Utah. Case No. 040904759 (Order, December 16, 2004).

[4]In her reply brief, Allen makes allegations concerning LogFurniture's former landlord, Depot Associates. Allen alleges that Depot Associates created a scheme to evict and attack Log Furniture in order to use Log Furniture's rental space for a lucrative government contract. These allegations are beyond the scope of the present appeal, to which Depot Associates is not a party.

The Court directs the Clerk of the Court to close this case.
IT IS SO ORDERED.
Dated this 13th of June 2005.

"s/ _____"
Dee Benson
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al., Appellees.	**ORDER** Case No. 2:04cv00505
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-0246

Before the Court are motions by appellants Golden Meadows Properties, L.L.C., Log Furniture, Inc., and Car Allen to reconsider the Court's order dated June 13, 2005. In that order, the Court affirmed the bankruptcy court's dismissal of an adversary proceeding. The Court, having reviewed the record, briefing, and relevant law, hereby DENIES appellants' motion. The Court adopts the reasoning presented in appellees' memorandum in opposition as the basis for this order.

IT IS SO ORDERED.

Dated this 22nd of July 2005.

"s/ _____ "

Dee Benson
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT

COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al., Appellees	**ORDER** Case No. 2:04cv00369
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-2466

Before the Court is an appeal by Log Furniture, Inc. and Golden Meadows Properties from an order of the bankruptcy court. Having reviewed the record and briefing, the Court finds that it has already addressed the issues dispositive of this appeal in previous orders. See Order, Case No. 2:04cv00505 (June 13, 2005); Order, Case No. 2:04cv00389 (April 7, 2005); Order, Case No. 2:04cv00349 (Nov. 10, 2004); Order, Case No. 2:04cv01030 (May 26, 2004); see also Order, Case No. 2:04cv00897 (Nov. 4, 2004) (J. Cassell). Indeed, appellants noted in their briefing that the statement of issues for this appeal is coextensive with the statement of issues for the appeal addressed in the Court's most recent order. See Memorandum in Support of Motion to Consolidate Cases, ¶8 ("The statement of issues . . . in each appeal are nearly identical."); Order, Case No. 2:04cv00505 (June 13, 2005).

Having already ruled against appellants on all dispositive issues, the Court hereby DISMISSES the appeal.

IT IS SO ORDERED.
Dated this 28th of September 2005.

"s/ _____"
Dee Benson
U.S. District Court Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOG FURNITURE, INC.,;
CARI ALLEN

Plaintiffs-Appellants,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; DAVID HARRIS; MACHINERY & HARDWARE SUPPLY; GRANITE STONE, L.C.,

Defendants- Appellees

No. 04-4276
(D.C. No. 2:04-CV-897-PGC)
(D. Utah)

In re: LOG FURNITURE, INC.,

Debtor.

LOG FURNITURE, INC.;
GOLDEN MEADOWS

No. 05-4228
(D.C. No. 2:04-CV-505-DB)
(D. Utah)

PROPERTIES; CARI ALLEN,
Plaintiffs -Appellants,
v.

GRANITE STONE L.C.; MACHINERY HARDWARE & SUPPLY; DAVID HARRIS; STEVEN W. CALL,
Receiver; ELIZABETH LOVERIDGE, ROBERT H. SWAN,

Defendants- Appellees

In re: LOG FURNITURE, INC.

Debtor.

No. 05-4266
(D.C. No. 2:04-CV-369-DB)
(D. Utah)

GOLDEN MEADOWS PROPERTIES;
LOG FURNITURE, INC.

Plaintiffs-Appellants

and

CARI ALLEN,

Appellant,

v.

GRANITE STONE, L.C.,

Defendant-Appellee.

ORDER AND JUDGMENT

Before LUCERO, PORFILIO, and HARTZ, Circuit Judges.

We have before us three separate appeals involving essentially the same parties and essentially the same issues in all three. The panel unanimously has concluded oral argument is unnecessary because the appeals are frivolous, Fed. R. Civ. P. 34(a)(2)(B); therefore, we have joined the cases for disposition only. After review, we dismiss in part and affirm in part.

Over the course of almost three years, the Appellants have been parties to no less than nine separate legal actions raising these same issues before two Bankruptcy Judges and two District Judges from the District of Utah, one state district judge and the two Utah appellate courts. This odyssey ends in our court.

Throughout this journey, Appellants have doggedly pursued two themes: first, the voluntary Chapter 7 bankruptcy petition filed on behalf of Log Furniture, Inc. which is the root of all this litigation, was illegally filed, and, second, a conjectural entity named "Log Furniture" exists outside of the bankruptcy proceeding. The parties treat this specter as though it were an *alter ego* of the Debtor in Bankruptcy, a separate existence unaffected by the Bankruptcy Code and in need of their protection from the vicissitudes of Appellees.[1] As part of these themes, Appellants also contend Granite Stone, L.C. was not the lawful owner of the stock of Log Furniture, Inc. at

the time Granite Stone filed the petition in bankruptcy, but instead the stock belonged to Golden Meadows Properties because of a "pledge agreement" between Golden Meadows, Log Furniture, Inc., and Cari Allen.[2] What these three cases now present to us is a tangled, nearly indecipherable mess of repeated and convoluted contentions engulfed in more smoke than a Friday boys-night-out poker jamboree.

The parties are well acquainted with the facts; therefore, it is unnecessary to repeat them here. Suffice to note, each of the issues mentioned above has been litigated to conclusion in the different fora, and, in each instance, Appellants' causes were carefully and correctly analyzed by the court[3]. Nonetheless, lest Appellants' be persuaded we do not give sufficient consideration to their appeals, we will deal briefly with the essential points they have raised.

First, Log Furniture, Inc. has no *alter ego*. Once the bankruptcy petition was filed, it became a Debtor in Bankruptcy. It is the foundational concept of the laws of bankruptcy that "all the legal and equitable interests in property" a Debtor has at the commencement of a case become the property of the bankruptcy estate, 11 U.S.C. § 541(a)(1). As such, those assets, including the claims asserted by the attorneys and Ms. Allen, are within the sole control of the Trustee in Bankruptcy whose duty it is to "collect the property of the estate and reduce it to cash. "11 U.S.C. § 704 (a) (l). See *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Hence, if, as Appellants allude, "Log Furniture" has "post-petition claims," these "claims" are also Debtor's property and part of the bankruptcy estate subject to collection by the Trustee for the benefit of the creditors of Log Furniture, Inc.

Moreover, the Code makes no provision within the structure of Chapter 7 for "former management" to appear in the proceeding and attempt to control the property of the estate,

or assert a separate interest on behalf of the Debtor. The whole notion that the contrary is true is antithetical to the basic concept of a corporate liquidating bankruptcy under Chapter 7 of the Code. Nothing is cited or argued by the Appellants that excepts them from this statutory construct.

Consequently, neither the lawyers who have purportedly appeared in this and other courts on behalf of "Log Furniture," nor Cari Allen, who represents herself to be the "sole stockholder of Log Furniture," has individual standing to pursue this litigation.[4] The only person with standing or legal capacity to represent Log Furniture, Inc.[5] in any litigation, including these appeals, is its Trustee. To argue other wise is simply specious.

As a consequence, now that we have been able to blow away the clouds of smoke that have enveloped Appellants' appeals, we will not consider further any arguments raised by either the lawyers claiming to represent "Log Furniture" or by Ms. Allen. The claims they seek to raise are not theirs to pursue, and that fact will never change. Their cases are wholly without merit in law or fact, and their appeals in cases 04-4276, 05-4228, and 05-4266 are DISMISSED as frivolous. *Thompson v. Gibson*, 289 F .3d 1218, 1222-23 (l0th Cir.. 2002) (holding that an appeal without an arguable basis in law or fact is frivolous and subject to dismissal).

Golden Meadows appears as an appellant in 05-4228 and 05-4266, ostensibly to argue the district court erred in determining the ownership of the stock of Log Furniture, Inc. prior to bankruptcy and that Golden Meadows' pledge agreement did not vest it with a controllable interest in Log Furniture, Inc. Much of its argument is centered in a convoluted procedural contention with due process overtones that neither the bankruptcy court nor the district court had jurisdiction to decide these issues because of a now-dissolved Temporary Restraining Order.

The record, however, indicates the district court order from which the appeal in 05-4228 has been taken was entered on June 13, 2005, and the order in 05-4266 was entered on September 28, 2005. The TRO was dissolved by stipulation on May 26, 2004. Under these circumstances, the jurisdictional argument of Golden Meadows loses its force.

Golden Meadows also asserts neither the district court nor the bankruptcy court heard testimony on the "stock ownership issue." The assertion lacks substance because both courts ruled upon the issue as a matter of law.

Simply put, both courts concluded that by its own terms the pledge agreement did nothing more than provide Cari Allen with "the ability. . . to vote the pledged stock or to operate Log Furniture, Inc., until such time as there may be a default. . . and [Cari Allen] has been given seven (7) days written notice of default." Both courts determined the agreement by its own terms gave the creditor "no remedy" in the case of a default, and neither court was persuaded to interpret the document to provide one. Golden Meadows has advanced no credible argument that the legal determinations were not correct [6]

For these reasons, the judgments against Golden Meadows in 05-4228 and 05-4266 are AFFIRMED [7]

Entered for the Court

"s/_____"
John C. Porfilio
Circuit Judge

FOOTNOTES

[1] For the sake of better clarity, the use of quotation marks throughout this Order and Judgment indicates the *alter ego*.

[2] After the filing of the bankruptcy petition, Howard Johnson, a lawyer claiming to represent "Log Furniture," and Ms. Allen filed a motion to dismiss the petition on the ground Granite Stone was not the stockholder of Log Furniture, Inc. and, thus, was without authority to file the petition. This motion was denied by the bankruptcy court, leading to an "emergency appeal" to the district court. (continued...)
(.....continued) Appellants assert the district court then issued a Temporary Restraining Order ostensibly prohibiting the liquidation of the Debtor, but the merits of the Bankruptcy Court's order of dismissal and its findings concerning the propriety of the filing apparently was not ruled upon at that time. The TRI was subsequently dissolved by stipulation.

[3] Suffice to say we see no reversible error in any of the decisions of the district and bankruptcy courts.

[4] Ms. Allen's position is hard to discern because she appears here pro se. To the extent she contends some undefined or contingent ownership rights which give her standing to question the validity of the bankruptcy filing, her interest is at best derivative. As a consequence, she is still without standing. *See Holmes v. Silver Wings Aviation, Inc., 881 F.2d 939,940 (10th Cir. 1989).*

[5] In reality, the legal entity is now the bankruptcy estate, not a corporation

[6] One might logically conclude even if the contrary were true, the pledge agreement required seven days' written notice of default before any residual rights would devolve to the benefit of Golden Meadows. The writ of execution was served upon Ms. Allen before such a notice was given to her, so any right Golden Meadows might arguably claim never reached fruition before its termination by the writ of execution.

[7] Appellees have also advanced an argument that Golden Meadows' appeals are moot for more than one reason, not the least of which is that Golden Meadows has entered into a final and sweeping settlement with the Trustee. We forego ruling on the issue, however valid it appears, simply because of the lack of merit in these appeals.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOG FURNITURE, INC.,; CARI ALLEN Plaintiffs-Appellants, v. STEVEN CALL; RAY, QUINNEY & NEBEKER; DAVID HARRIS; MACHINERY & HARDWARE SUPPLY; GRANITE STONE, L.C., Defendants- Appellees	No. 04-4276
In re: LOG FURNITURE, INC., Debtor.	No. 05-4228
LOG FURNITURE, INC.; GOLDEN MEADOWS PROPERTIES; CARI ALLEN, Plaintiffs -Appellants, v. GRANITE STONE L.C.;	

MACHINERY HARDWARE & SUPPLY; DAVID HARRIS; STEVEN W. CALL, Receiver; ELIZABETH LOVERIDGE, ROBERT H. SWAN,

Defendants- Appellees

In re: LOG FURNITURE, INC.

Debtor.

GOLDEN MEADOWS PROPERTIES; LOG FURNITURE, INC.

Plaintiffs-Appellants

and

CARI ALLEN,

Appellant,

v.

GRANITE STONE, L.C.,

Defendant-Appellee.

No. 05-4266

ORDER

Filed June 5, 2006

Before **LUCERO, PORFILIO,** and **HARTZ,** Circuit Judges.

Appellant Log Furniture, Inc.'s petition for rehearing and appellant Cari Allen's petition for rehearing are denied by the panel that rendered the decision.

The petitions for rehearing en banc were transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, these petitions are also denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

By: "s/_____"
Deputy Clerk

11 U.S.C. § 101(41)

(41) "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;

11 U.S.C. § 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) [1] of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or

a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

11 U.S.C. § 323. Role and capacity of trustee

(a) The trustee in a case under this title is the representative of the estate.

11 U.S.C § 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329 (b), 363 (n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510 (c) or 551 of this title.
(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
(A) by bequest, devise, or inheritance;
(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
(C) as a beneficiary of a life insurance policy or of a death benefit plan.
(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
(7) Any interest in property that the estate acquires after the commencement of the case.

11 U.S.C § 554. Abandonment of property of the estate

(c) Unless the court orders otherwise, any property scheduled under section 521

(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title

11 U.S.C §726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—
(6) sixth, to the debtor.

11 U.S.C § 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals [1]
(1) from final judgments, orders, and decrees;
(c)

(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

I. the appellant elects at the time of filing the appeal; or

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section

28 U.S.C § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C § 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

NEVADA REVISED STATUTES

DIRECTORS AND OFFICERS

NRS 78.115 ***Board of directors: Number and qualifications.*** *The business of every corporation must be managed under the direction of a board of directors or trustees, all of whom must be natural persons who are at least 18 years of age. A corporation must have at least one director, and may provide in its articles of incorporation or in its bylaws for a fixed number of directors or a variable number of directors, and for the manner in which the number of directors may be increased or decreased. Unless otherwise provided in the articles of incorporation, directors need not be stockholders.*

[Part 31:177:1925; NCL § 1630]—(NRS A 1965, 1012; 1981, 384; 1987, 577; 1993, 949; 1995, 1113; 2003, 3083*)*

NRS 78.120 ***Board of directors: General powers.***

1. Subject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of the corporation.

2. Except as otherwise provided in this subsection and subject to the bylaws, if any, adopted by the stockholders, the directors may make the bylaws of the corporation. Unless otherwise prohibited by any bylaw adopted by the stockholders, the directors may adopt, amend or repeal any bylaw, including any bylaw adopted by the stockholders. The articles of incorporation may grant the authority to adopt, amend or repeal bylaws exclusively to the directors.

3. The selection of a period for the achievement of corporate goals is the responsibility of the directors.

[Part 31:177:1925; NCL § 1630]—(NRS A 1991, 1217; 2003, 3083*;* 2005, 2176*)*

NRS 78.139 ***Directors and officers: Duties, presumptions and powers when confronted with change or potential change in control of corporation.***

1. Except as otherwise provided in subsection 2 or the articles of incorporation, directors and officers confronted with a change or potential change in control of the corporation have:

(a) The duties imposed upon them by subsection 1 of NRS 78.138*; and*

(b) The benefit of the presumptions established by subsection 3 of that section.

2. If directors and officers take action to resist a change or potential change in control of a corporation which impedes the exercise of the right of stockholders to vote for or remove directors:

(a) The directors must have reasonable grounds to believe that a threat to corporate policy and effectiveness exists; and

(b) The action taken which impedes the exercise of the stockholders' rights must be reasonable in relation to that threat.

If those facts are found, the directors and officers have the benefit of the presumption established by subsection 3 of NRS 78.138.

3. The provisions of subsection 2 do not apply to:

(a) Actions that only affect the time of the exercise of stockholders' voting rights; or

(b) The adoption or execution of plans, arrangements or instruments that deny rights, privileges, power or authority to a holder of a specified number or fraction of shares or fraction of voting power.

4. The provisions of subsections 2 and 3 do not permit directors or officers to abrogate any right conferred by statute or the articles of incorporation.

5. Directors may resist a change or potential change in control of the corporation if the directors by a majority vote of a quorum determine that the change or potential change is opposed to or not in the best interest of the corporation:

(a) Upon consideration of the interests of the corporation's stockholders and any of the matters set forth in subsection 4 of NRS 78.138*; or*

(b) Because the amount or nature of the indebtedness and other obligations to

which the corporation or any successor to the property of either may become subject, in connection with the change or potential change in control, provides reasonable grounds to believe that, within a reasonable time:

(1) The assets of the corporation or any successor would be or become less than its liabilities;

(2) The corporation or any successor would be or become insolvent; or

(3) Any voluntary or involuntary proceeding pursuant to the federal bankruptcy laws concerning the corporation or any successor would be commenced by any person.

(Added to NRS by ERLINK"http://www.leg.state.nv.us/Statutes/70th/Stats199910.html"\l"Stats199910page1575"1999, 1575)

UTAH CODE

43-1-2. Transfer -- By delivery -- By endorsement -- Rights of transferee.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the bearer to the benefits thereof, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the person named therein to the benefits thereof, and which provides in substance that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired, if endorsed in blank or, if it is endorsed to a specified person, by delivery by such other person.

A person to whom title is so transferred, who takes any such instrument for present or antecedent value, without notice of prior defenses, equities or claims of ownership enforceable against the transferor, shall have absolute title thereto free of any defenses enforceable against, or claims of ownership of, the signer or any prior holder. The holder of any such security receipt, or equipment trust certificate, unless the same has been endorsed in blank by such specified person, shall be deemed prima facie to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired title as a holder for value and without notice as aforesaid.

The provisions of this section shall not be applicable to the transfer of any security receipt, or equipment trust certificate, when it is shown that such transfer was made after the date fixed therein for performance by the signer of his obligations thereunder, or, if no date is so fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform. No Change Since 1953

BANKRUPTCY RULE 9010-1
ATTORNEYS - NOTICE OF APPEARANCE

(a) Attorney of Record. *An attorney, or a party not represented by an attorney, who signs and files a petition, pleading or paper, is deemed to have made an appearance in the matter. If an attorney's appearance has not been established previously by the filing of papers in the case or proceeding, the attorney must file a notice of appearance promptly upon undertaking the representation of any party or witness. An attorney of record is responsible in all matters respecting the case or proceeding before and after a judgment, until the closing of the case, until the time for appeal from a judgment or order has expired or a judgment or order has become final after appeal, or until there has been an order permitting withdrawal by or substitution of the attorney in the case or proceeding.*

(b) Notification of Change in Address or Telephone Number. *In all cases and proceedings, attorneys and parties appearing without an attorney must notify the clerk's office of any change in address or telephone number.*

(c) Appearance by Attorney. *A party who has appeared by an attorney, may not appear or act thereafter in its own behalf in the action or take any steps therein, unless an order of withdrawal or substitution is entered by the court after notice to the party's attorney and to parties in interest. However, notwithstanding that a party has appeared or is represented by an attorney, at its discretion, the court may hear a party in open court. An attorney who has appeared of record for any party must:*

(1) represent the party in the action;

(2) be recognized by the court and by all parties to the action as having control of the client's case; and

(3) sign all papers that are to be signed on behalf of the client.

No. 06-486

SUPREME COURT, U.S.
DEC 6 - 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,

Petitioners,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioners have presented compelling reasons to grant the Petition where the Tenth Circuit's decision properly applies a prior decision of this Court and is consistent with the Utah Supreme Court, and does not conflict with a decision of another court of appeals.

II. Whether Petitioners have presented compelling reasons to grant the Petition where the Tenth Circuit, the district courts, the bankruptcy court, the Utah state trial courts, the Utah Court of Appeals, and the Utah Supreme Court have determined that Petitioners lack standing to usurp a bankruptcy trustee.

III. Whether Petitioners have presented compelling reasons to grant the Petition where the Tenth Circuit, the district courts, and the bankruptcy court, consistent with the decisions of the Utah Supreme Court, Utah Court of Appeals, and Utah state trial courts, have factually determined that the bankruptcy petition was properly authorized and filed.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Granite Stone, L.C. is wholly owned by Machinery and Hardware Supply, Inc., none of whose stock is owned by any publicly held corporation. Ray Quinney & Nebeker P.C. is a privately and individually held professional corporation.

TABLE OF CONTENTS

	Page
Questions Presented	i
Corporate Disclosure Statement Pursuant to Supreme Court Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Introduction	1
Statement of the Case	2
Clarification of the Record	2
Reasons for Denying the Petition	10
I. Applying this Court's *Weintraub* decision, Petitioners had no standing once the chapter 7 bankruptcy case was filed, because the corporate debtor is managed only by the bankruptcy Trustee	10
II. The federal and state courts' determinations of the propriety of the bankruptcy filing are consistent with the decisions of this Court and the courts of appeals.	15
Conclusion	19

TABLE OF CITED AUTHORITIES

Page

Cases:

Chitex Comm., Inc. v. Kramer, 168 B.R. 587 (S.D. Tex. 1994) 17

Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985) 10, 11, 12, 13, 14

Delgado Oil Co. v. Torres, 785 F.2d 857 (10th Cir. 1986) 14

First Sec. Bank of Utah, N.A. v. Gillman, 158 B.R. 498 (D. Utah 1993) 15

Foster v. Hill (In re Foster), 188 F.3d 1259 (10th Cir. 1999) 12

In re Sandra Cotton, Inc, 87 B.R. 272 (W.D.N.Y. 1988) 13

Keenihan v. Heritage Press, Inc., 19 F.3d 1255 (8th Cir. 1994) 16, 17

Price v. Gurney, 324 U.S. 100, 65 S. Ct. 513 (1945) 18

Sender v. Simon, 84 F.3d 1299 (10th Cir. 1996) 14

Cited Authorities

Page

Statutes:

11 U.S.C. §323(a) 11

11 U.S.C. §541(a) 14

11 U.S.C. §541(a)(7) 15

Nev. Rev. Stat. §§78.320, 78.325 and 78A.070 ... 16

Rules:

Sup. Ct. R. 10 1

Other:

H.R. Rep. No. 595, 95th Cong., 1st Sess. 367, reprinted in 1978 U.S.C.C.A.N. 5963, 6323 15

INTRODUCTION

Petitioners' claims have been considered and soundly rejected no less than nineteen times by two bankruptcy courts, two federal district courts, the Court of Appeals for the Tenth Circuit, two Utah state trial courts, the Utah Court of Appeals, and the Utah Supreme Court. Petitioners have presented no "compelling reasons" in support of their petition. *See* Sup. Ct. R. 10. The merits of the claims asserted by Petitioners are in inverse proportion to the amount of litigation Petitioners have generated attempting to convince some court that the claims have any legitimacy.

The Tenth Circuit ruled that the Petitioners' appeals of the cases, for which a writ of certiorari is petitioned, were frivolous and stated that the "odyssey ends in our court." [App. at 21]. Unfortunately, the "odyssey" did not end in the Tenth Circuit. Although one appellant below, Golden Meadows Properties, LLC, accepted reality and did not file or join in the petition for a writ of certiorari, Petitioners persist in their effort to pursue frivolous claims that are without any merit whatsoever and for which they lack standing. Petitioners do not make a serious attempt to carry their difficult burden of demonstrating compelling reasons. The sole reference of Petitioners to a rule 10 standard is that one sentence of the Tenth Circuit opinion is a departure from usual judicial proceedings. [Petition at 8]. Because Petitioners have wholly failed to demonstrate any basis for granting certiorari, the Petition should be denied.

STATEMENT OF THE CASE

Petitioners' Statement of the Case is rife with factual inaccuracies that substantially distort and mischaracterize the record. For example, Petitioners claim that Cari Allen sold her Log Furniture, Inc. stock to Golden Meadows Properties, LLC ("Golden Meadows") on July 21, 2000, and therefore Granite Stone, LC ("Granite") never obtained ownership of the stock at the later conducted sheriff's sale of her stock. [Petition at 3-4]. To the contrary, as Golden Meadows' principal and Cari Allen both testified, and as Golden Meadows' attorney argued, Cari Allen only pledged her stock to Golden Meadows as security for a loan. She remained the sole shareholder of Golden Meadows at the time of the sheriff's sale when her stock was sold. Respondents contest Petitioners' Statement of the Case. The record before the court of appeals in the three cases is 4828 pages. Because Petitioners have egregiously failed to fairly set forth with accuracy the factual record in this case and have grossly misstated the facts, Respondents set forth briefly their own statement of the facts relevant to a consideration of the Petition and to clarify the record.

CLARIFICATION OF THE RECORD

Allen's Ownership of the LFI Stock

On April 2, 2002, Machinery & Hardware Supply, Inc. ("MHS") obtained a money judgment in the principal amount of $17,189.54 in the Third Judicial District Court, State of Utah (the "State Court"), against Log Furniture, Inc. ("LFI") and its sole shareholder, Cari Allen ("Allen"). [10th Resp.

App. at 5-6].[1] On October 22, 2002, LFI filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, case no. 02-37988 (the "Prior Bankruptcy Case"). [10th Resp. App. at 18]. Howard P. Johnson ("Johnson"), a now suspended or disbarred Utah lawyer, represented LFI as debtor's counsel in the Prior Bankruptcy Case. [*Id.*] In LFI's bankruptcy schedules, in its disclosure statement and plan of reorganization, and in Allen's testimony, it was stated and represented repeatedly that Allen was the sole shareholder of LFI. [*See, e.g.*, App. at 2].

The Acquisition of Allen's LFI Stock by Granite

On June 2, 2003, MHS obtained a writ of execution from the State Court with respect to the personal property of Allen and the writ was personally served on Allen on June 17, 2003. [App. at 2]. The praecipe in support of the writ directed the sheriff to execute and levy upon the non-exempt personal property of Allen, specifically including all "right, title and interest that the judgment debtor, Cari Allen, has . . . in any stocks or corporations." [App. at 2]. Allen objected to the levy and execution sale of her personal property and a hearing on Allen's objection was held on July 16, 2003. Allen told the State Court that her stock in LFI "was assigned over two years ago" and requested that the hearing be continued. [10th App. at 206-207].

On July 23, 2003, the State Court conducted the continued hearing on the execution, and also addressed an objection by Golden Meadows regarding Allen's personal interest in the LFI stock. [10th App. at 210-228]. Golden

1. Respondents references are to the record before the Court of Appeals for the Tenth Circuit in No. 05-4228, except for references to the Petitioners' appendix as noted.

Meadows' counsel stated that "although it has an assignment of those stock interests, that does not mean that Golden Meadows owns the stock. It does not but Golden Meadows does have a pledge of stock. . . ." [10th App. at 217-219]. Golden Meadows' counsel reiterated: "we don't dispute the ownership of the stock in Cari Allen but just assert a security interest in the pledge as well as the security interest in the real property." [10th App. at 224-225]. The court considered and denied the objection raised by Golden Meadows, concluding that Golden Meadows had not presented sufficient evidence for the court to conclude that the writ of execution was improper or that it should be stayed, and overruled all objections. [10th App. at 226-227]. The court further concluded that even if Golden Meadows had established (which it did not) a security interest in the property attached pursuant to the writ of execution, then the security interest would not preclude the execution sale. [*Id.*].

Pursuant to the writ of execution and rulings of the State Court overruling the objections to execution, on September 10, 2003, the sheriff conducted an execution sale of all of Allen's interest/shares in LFI and sold them to MHS. [App. at 2]. MHS assigned all of its interest in the ownership interest/shares of LFI to Granite. [*Id.*].

The Filing of the Bankruptcy Case and Subsequent Proceedings

On September 11, 2003, the Prior Bankruptcy Case was dismissed. [10th Resp. App. at 36]. Granite, in its capacity as the sole shareholder of LFI and acting by and through its manager, MHS, authorized the filing of the chapter 7 bankruptcy petition for LFI, which was filed on October 31, 2003, commencing the bankruptcy case from which the

present Petition arises. (the "Bankruptcy Case"). [App. at 4]. Elizabeth R. Loveridge ("Loveridge") was appointed as the initial chapter 7 trustee for LFI in the Bankruptcy Case on or about November 6, 2003. [10th App. at 130]. Loveridge was reappointed as successor trustee on or about May 12, 2004, after the elected trustee, Robert Swan, resigned. [10th App. at 416]. Whichever trustee was serving at the relevant time is referred to as the "Trustee."

On November 7, 2003, Johnson, purporting to act as counsel for LFI, filed a motion to dismiss the Bankruptcy Case. [10th App. at 436]. At a hearing on November 20, 2003, the bankruptcy court denied the motion and ruled, as follows:

> It is the finding of the Court that [LFI] can only act through the Trustee in this Chapter 7 case. If someone wants to claim that there was no authorization for filing the Bankruptcy Petition in the first place, they need to claim it. They need to claim it in their own name and show why. The Motion will be denied. [10th App. at 260-261].

On December 1, 2003, Golden Meadows filed its motion to dismiss the Bankruptcy Case, and on December 8, 2003, filed its "Second Amended Motion" to dismiss the Bankruptcy Case (collectively, hereinafter, the "Amended Motion to Dismiss"). [10th Resp. App. at 105-112, 154-166]. Johnson, purporting to act for LFI or its "management," filed a memorandum in support of the Amended Motion to Dismiss. [10th Resp. App. at 113-142]. Voluminous pleadings and documents were submitted to the bankruptcy court as evidence in support of or in opposition to the Amended Motion to Dismiss which are contained in the record of 4828 pages. On January 5, 2004, the bankruptcy court conducted

a hearing on the Amended Motion to Dismiss and at the conclusion of the hearing ruled, as follows:

> The court finds that authorization to file a bankruptcy petition is given by the Nevada statute to the shareholders. *It's uncontested that the sole shareholder of the corporation [Granite] having executed on the stock did vote in favor of authorizing filing of the bankruptcy petition.* That is clear authority for the Nevada court. Court finds that the filing is valid and the motion to dismiss will be denied. [10th App. at 53] [emphasis added].

The bankruptcy court's written order respecting the January 5, 2004 ruling was entered on March 30, 2004 (the "March 30 Order"). [App. at 1-4]. As set forth in the March 30 Order, the bankruptcy court determined that Granite was the sole shareholder of LFI on the bankruptcy filing date, that Granite was properly authorized to file the bankruptcy, and that the filing of the Bankruptcy Case was valid. [*Id.*].[2]

On January 30, 2004, the United States Trustee filed a motion requesting that the bankruptcy court reconsider its ruling denying dismissal, based upon later events in the State Court. [10th Resp. App. at 561-569]. Golden Meadows filed a memorandum joining in the motion. [10th Resp. App. at 570-600]. The bankruptcy court conducted an evidentiary hearing on the motion, on February 10, 2004, at which numerous parties appeared and stated their positions,

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2. The district court, in denying a motion to withdraw the reference of the Bankruptcy Case, entered an order (Case No. 2:04-cv-00349) on November 12, 2004, which adopted the bankruptcy court's January 5, 2004 ruling. [10th Resp. App. at 704]. No appeal was taken.

including Golden Meadows' counsel and Johnson as counsel for the "management" of LFI. [10th Resp. App. at 601-610]. Allen testified extensively at the hearing. [*Id.*] The bankruptcy court denied the motion, and on March 16, 2004, entered its written order (the "March 16 Order") denying the motion. [10th Resp. App. at 611-614]. No appeal was taken from the March 16 Order. [10th App. 419-423].

On May 24, 2004, Golden Meadows filed yet another pleading requesting that the bankruptcy court dismiss the Bankruptcy Case alleging Granite was not authorized to file LFI's bankruptcy petition. [10th Resp. App. at 615-700]. The bankruptcy court treated Golden Meadows' new filing as a motion to reconsider the March 30 Order, and in a hearing held June 7, 2004, denied the motion. [10th App. at 328-338]. In its detailed ruling stated on the record, the bankruptcy court noted that the facts upon which the March 30 Order was based were "largely contained in the statement of facts" filed by Golden Meadows. [10th App. at 334]. The court's order implementing its June 7, 2004 rulings was entered on June 23, 2004 (the "June 23 Order"). [10th App. at 104]. No appeal was taken from the June 23 Order. [10th App. at 408-09].

Johnson, once more purporting to act as counsel for LFI, commenced an adversary proceeding from which this Petition arises by filing a complaint against Granite, and MHS, their principal and attorneys, and the Trustee on November 7, 2003 (the "Adversary Proceeding"). [10th App. at 436]. An amended complaint was later served adding Golden Meadows as a plaintiff. [10th App. at 150]. The complaint and amended complaint sought damages and other relief against the defendants for their alleged wrongdoing in filing the Bankruptcy Case. The bankruptcy court dismissed the

Adversary Proceeding, including the complaint and amended complaint, with prejudice by Order dated April 20, 2004. [10th App. at 5-6].

On March 8, 2004, Johnson, again purporting to act for LFI but this time joined by Allen, purportedly as a *pro se* litigant, filed a new complaint in the State Court naming Respondents herein as defendants. [10th App. at 297]. The claims asserted were substantially similar to, and arose from substantially the same facts and circumstances, as those asserted in the Adversary Proceeding. Defendants removed the new State Court action (the "Removed Action") in its entirety to the bankruptcy court pursuant to 28 U.S.C. §1452(a), and then moved to dismiss the complaint. The bankruptcy court by order dated July 28, 2004 (the "July 28 Order") dismissing with prejudice all claims of LFI brought by Johnson and all claims of Allen "which arise from, arise in, or relate to" the filing of LFI's chapter 7 bankruptcy case, based in part on the bankruptcy court's prior rulings and orders determining that LFI's bankruptcy case was properly filed by Granite. [App. at 7-9]. The remaining claims of Allen, if any, were remanded to the State Court and then dismissed with prejudice by the State Court. [10th App. at 139]. The Utah Court of Appeals summarily dismissed Allen's appeal [10th App. at 146] and the Utah Supreme Court denied certiorari. [10th Resp. App. at 706-708].

Allen, and Johnson still purportedly acting for LFI, appealed the bankruptcy court's July 28 Order partially dismissing the Removed Action to the district court, and the defendants moved for summary dismissal. The federal district court entered an order dated November 4, 2004 dismissing the appeal based on Johnson's and Allen's lack of authority and standing and affirming the bankruptcy court's order dismissing the complaint. [App. at 10-11].

Although no party filed a timely appeal from the order entered by the State Court which overruled the objections to MHS's execution on Allen's stock and permitted the execution to proceed, Allen did appeal a separate order of the State Court entered on August 4, 2004, which vacated a pre-trial order on issues respecting Granite's ownership of the LFI stock. [10th App. at 120]. The Utah Court of Appeals summarily dismissed Allen's appeal, holding: "Although Allen was once the sole owner of the LFI stock, she no longer had any interest in the stock as of September 2003 at the latest, when the stock was sold at an execution sale." [10th App. at 128-129]. Thus, the Utah Court of Appeals reached the same result as the bankruptcy court in ruling that any ownership interest Allen had in LFI's stock was sold to Granite at the September 2003 execution sale. The Utah Supreme Court denied Allen's petition for writ of certiorari. [10th App. at 383]. Undaunted, Allen filed a rule 60(b) motion in the state trial court to vacate the execution order. By order of September 1, 2005, that motion was denied. Allen appealed and the Utah Court of Appeals affirmed, and the Utah Supreme Court denied certiorari.

Petitioners and Golden Meadows appealed to the Tenth Circuit from the dismissal of the two adversary proceedings and the denial of their motions to dismiss the bankruptcy case. The Tenth Circuit issued a consolidated opinion, stating that the appeals were frivolous, dismissing LFI's (through Drage) and Allen's appeals for lack of standing, and affirming the decisions against Golden Meadows. Although the lower courts ruled that only the Trustee had standing to assert claims for LFI and that attorney Nathan Drage could not, Drage persists without authority in his attempt to raise claims of LFI in the Petition, as does Allen.

REASONS FOR DENYING THE PETITION

The Petitioners raise amorphous issues to avoid review of their lack of standing. Cari Allen, neither individually nor as a former officer, former shareholder, or former director of the debtor, has standing to continue this over litigated case. The Petition presents no compelling reason to invoke the discretionary jurisdiction of this Court.

I. Applying this Court's *Weintraub* decision, Petitioners had no standing once the chapter 7 bankruptcy case was filed, because the corporate debtor is managed only by the bankruptcy Trustee

Johnson repeatedly and erroneously claimed before the bankruptcy court, the federal district courts, the state trial courts, the Utah Court of Appeals, and the Utah Supreme Court, in numerous related proceedings that he was filing papers and appearing for and on behalf of LFI or LFI's "management," ostensibly Allen. Drage continued the error before the Tenth Circuit and before this Court. The Bankruptcy Court properly ruled that Johnson and Allen have no authority or standing to assert claims on behalf of LFI.. The district court in four orders correctly affirmed that ruling, [App. at 10-19], as did the Tenth Circuit. [App. at 19-25]. Neither Johnson nor Allen, LFI's former owner, former director and former officer, nor LFI's purported current counsel, Drage, has any legal authority to represent or take positions on behalf of the corporate entity, LFI, or its present "management" (which is the Trustee in bankruptcy). Similarly, none of Johnson, Allen or Drage has any legal authority to assert claims for damages that belong to LFI's bankruptcy estate or to file claims or appeals relating to those claims or to file this petition.

LFI is a corporation and has been a chapter 7 debtor in bankruptcy since the Petition Date. When a corporation becomes a chapter 7 debtor (and, similarly, when a trustee is appointed for a corporation in a chapter 11 case), a bankruptcy trustee is appointed to take control of all of the corporation's property, including all rights and causes of action, and the corporate debtor's former management and directors are "completely ousted." *See*, *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348-54 (1985). *See also* 11 U.S.C. §323(a) (the bankruptcy trustee is the authorized "representative of the estate").

Johnson clearly did not – and Drage does not – represent the Trustee and therefore they do not represent LFI or its bankruptcy estate. Thus, Johnson and Drage either have had no client in this case, or their client is really Allen in her individual capacity. None of Johnson, Drage or Allen is an authorized post-bankruptcy filing representative of LFI, and neither Johnson or Drage nor Allen is LFI's post-petition "management." As of the Petition Date, the Trustee is the "management" of LFI, and the Trustee and her appointed counsel are the only authorized representatives of LFI. The Trustee did not file the Adversary Proceeding or the Removed Action asserting claims of LFI against the Respondents, and the Trustee did not appeal the orders dismissing those alleged claims. Allen has no standing because she is no longer a shareholder, officer or director.

Notwithstanding unstayed court orders to the contrary, Johnson, Drage and Allen argue that LFI holds claims, rights and interests that are not part of LFI's bankruptcy estate. Their argument is wrong, and results from their failure to recognize the significant differences between individuals and corporations in chapter 7 bankruptcy cases. An individual

who files a chapter 7 case obviously continues to have a separate existence – along with certain rights, exempt property, liabilities and privileges – apart from his or her bankruptcy estate controlled by the trustee, but a corporate entity in a chapter 7 bankruptcy case does not – a corporate bankruptcy estate is coextensive with the corporate debtor. Thus, while an individual debtor may engage separate counsel to defend his or her interests that are distinct from the interests of the trustee and the property of the bankruptcy estate, a corporate debtor in bankruptcy is an "inanimate entity" that has no separate existence and no rights, claims, privileges, or interests other than those controlled exclusively by the bankruptcy trustee. *See Weintraub*, 471 U.S. at 348-53; *see also Foster v. Hill (In re Foster)*, 188 F.3d 1259, 1267 (10th Cir. 1999) (recognizing that "while a trustee may control a corporate debtor as would its prebankruptcy management," a bankruptcy trustee does not control an individual debtor).

This Court's opinion in *Weintraub* cogently resolved and explained the nature and status of a corporate debtor in a chapter 7 bankruptcy case. Although the specific issue was whether the chapter 7 trustee could waive the corporate debtor's attorney/client privilege, this Court's detailed reasoning and thorough analysis have broad application. A corporation is an inanimate entity that can act only through its authorized agents. *Weintraub*, 471 U.S. at 348. Outside of a bankruptcy proceeding, a corporation's management authority normally is exercised by its officers and directors. *Id.* at 348-49. Bankruptcy causes "fundamental changes in the nature of corporate relationships." *Id.* at 355. The Bankruptcy Code vests the bankruptcy trustee with wide-ranging management authority to control a corporate debtor. *Id.* at 351-52. In bankruptcy, the powers of the corporate debtor's pre-bankruptcy directors and officers are "severely

limited" to turning over the corporation's property to the trustee and providing certain information. *Id.* Bankruptcy Code provisions and legislative history indicate that Congress intended the bankruptcy trustee to assume control of a corporate debtor and that the debtor's directors would be "completely ousted." *Id.* at 352-53. Accordingly, for a corporation in a chapter 7 case, the bankruptcy trustee is the authorized agent and hence the corporation's management. *Id.* at 352-54.

This Court also recognized in *Weintraub* the distinction between individual and corporate bankruptcy debtors is important. *See id.* at 356. The distinction is one that the Petitioners persistently ignore.

Correctly applying the *Weintraub* reasoning in a bankruptcy appeal, a district court flatly rejected arguments very similar to those made by Appellants. In *In re Sandra Cotton, Inc.*, 87 B.R. 272 (W.D.N.Y. 1988), an attorney retained by the corporate debtor's principal attempted to appear on behalf of the corporation, arguing that he had "the right to represent the ongoing 'residue' of the corporation which will remain after the bankruptcy has ended." 87 B.R. at 274. The court framed the issue as "whether anyone besides the Trustee in Bankruptcy can proceed on behalf of and represent the debtor corporation." *Id.* The court reasoned that "[p]ursuant to 11 U.S.C. §727(a)(1) only an individual can be granted a discharge in bankruptcy, and it thus appears that there would be no 'residue' of the corporation to be represented or protected by someone other than Trustee." *Id.* The court further explained, citing this Court in *Weintraub*, that the "power and duties of the Trustee are extensive and he has broad management authority over the debtor." *Id.* The court concluded:

> Pursuant to Bankruptcy Rule 6009 the Trustee is granted complete authority and discretion with respect to prosecuting or defending any litigation involving the bankrupt. He is even vested with control of the corporation's attorney-client privilege. With these general principles firmly in place and having in mind the fact that a bankrupt corporation is never discharged, it is readily apparent to this Court that there is no party other than the Trustee who can represent the debtor corporation on this appeal. *Id.* [Citations omitted]

The holding applies equally in the present case, consistent with this Court's decision in *Weintraub*.

Even if LFI as a corporate entity were not controlled exclusively by the Trustee, all of LFI's property interests, including any and all claims or causes of action it may have against others, would still belong exclusively to LFI's bankruptcy estate under the exclusive control of the Trustee for the benefit of LFI's creditors. Section 541(a) of the Bankruptcy Code provides that "all legal or equitable interests of the debtor in property" as of the bankruptcy petition date become property of the bankruptcy estate. 11 U.S.C. §541(a). Property of the estate clearly includes claims and causes of action. *See, e.g., Sender v. Simon*, 84 F.3d 1299, 1305 (10th Cir. 1996) (the §541(a) definition of estate property "includes causes of action belonging to the debtor at the commencement of the bankruptcy case"); *Delgado Oil Co. v. Torres*, 785 F.2d 857, 860 (10th Cir. 1986) ("The §541 estate, thus, includes any right of action the debtor corporation may have to recover damages for misconduct, mismanagement, or neglect of duty by a corporate officer or director. The trustee in bankruptcy succeeds to that right. Its

nature is derivative."); *First Sec. Bank of Utah, N.A. v. Gillman*, 158 B.R. 498, 505 (D. Utah 1993). *See also* H.R. Rep. No. 595, 95th Cong., 1st Sess. 367, reprinted in 1978 U.S.C.C.A.N. 5963, 6323 (under §541 a debtor's bankruptcy estate "will include choses in action and claims by the debtor against others").

Accordingly, any causes of action belonging to LFI on the Petition Date became property of LFI's bankruptcy estate on the Petition Date and are under the exclusive control of the Trustee. Moreover, even alleged causes of action belonging to LFI that arose *after* the Petition Date are under the exclusive control of the Trustee. Pursuant to 11 U.S.C. §541(a)(7), "[a]ny interest in property that the estate acquires after the commencement of the case" is included as property of the debtor's bankruptcy estate. Petitioners steadfastly refuse to accept the factual findings of no interest and contemptuously ignore the legal conclusions of lack of standing.

II. The federal and state courts' determinations of the propriety of the bankruptcy filing are consistent with the decisions of this Court and the courts of appeals.

Petitioners once more incorrectly argue, as they unsuccessfully did before all the courts below as well as before the Utah trial and appellate courts, that even if Granite was the sole shareholder of LFI at the time it filed the LFI bankruptcy petition, Granite had no authority as a shareholder to file the petition because management was vested in the board of directors. Hence, Petitioners suggest that this Court review misapplication of a properly stated rule of law. This argument raises nothing more than a routine question of Nevada state law and was correctly rejected by the bankruptcy

court, the district court, the Tenth Circuit, and the Utah state trial and appellate courts.

As the lower courts correctly determined, Nevada law permits any action to be taken by written consent of the shareholders without a meeting that could be taken at a meeting. *See*, Nev. Rev. Stat. §§78.320, 78.325 and 78A.070. Moreover, §2.8 of Log Furniture's By-Laws also provides that any action that may be taken by shareholders at a meeting may be taken by written consent of the shareholders without a meeting: "Any action which may be taken at a meeting of the Shareholders may be taken by written consent without a meeting if such action is taken in conformance with the Nevada Corporations Code." [Log Furniture By-Laws §2.8 at 12]. It is indisputable that Granite as the sole shareholder of LFI properly took shareholder action to authorize the filing of the bankruptcy petition by written consent:

> IT IS HEREBY RESOLVED that David Harris, who is an officer of Machinery and Hardware Supply, the managing member of Granite Stone, LC, is hereby authorized to sign a voluntary petition in bankruptcy under Chapter 7 of the United States Bankruptcy Code on behalf of [LFI] in the United States Bankruptcy Court for the District of Utah, and to sign and execute any other documents that may be necessary in connection therewith. . . . [10th App. at 183]

The cases cited by Petitioners do not support their position that as the sole shareholder Granite had no authority to authorize the filing of the bankruptcy petition. *Keenihan v. Heritage Press, Inc.*, 19 F.3d 1255 (8th Cir. 1994), which Petitioners mischaracterize as "an action amazingly similar

to the present case" [Petition at 15], involved far different facts. In *Keenihan*, the pledgee of the majority of the corporate stock had the right to vote the stock upon default. The state court had entered a temporary restraining order that the pledgee had the right to control management of the corporation and impliedly ruled that the pledgee had the right to vote the stock. Thus, because the pledgor had no right to vote the stock, he had no authority to vote the stock to authorize the bankruptcy filing.[3] In stark contrast, in the present case, although Golden Meadows had a pledge of stock as security for its loan, Golden Meadows did not have the right to vote the stock. Granite obtained the right to vote the stock when it obtained ownership of the stock (including voting rights) and as the sole shareholder voted to authorize the bankruptcy filing.

Chitex Comm., Inc. v. Kramer, 168 B.R. 587 (S.D. Tex. 1994), cited by Petitioners, is also easily distinguished. A receiver was appointed in a divorce action with full ownership of 100% of the corporate stock and full power of control of the corporation. Thus, the court ruled that the husband as former president of the corporation had no authority to file the bankruptcy proceeding for the corporation.

Petitioners cite cases for the proposition that the power to manage a corporation resides in the board of directors. [Petition at 16]. None of these cases involved a situation where a sole shareholder in accordance with the provisions of applicable state law gave written consent for the filing of a bankruptcy petition, and are not on point. For example, in

3. Significantly, and contrary to Petitioners' argument, this opinion recognizes the authority of shareholders under state law to authorize the filing of a bankruptcy petition.

Price v. Gurney, 324 U.S. 100, 65 S. Ct. 513 (1945), an individual who owned seven shares of stock of a corporation and who purported to act as agent for other stockholders filed a bankruptcy petition in the name of the corporation. This Court rejected the argument that because the directors had allegedly breached their trust and committed acts against the shareholders' interests, that the shareholders had a right to bring the bankruptcy proceeding as a derivative action on behalf of the corporation under the rules applicable to derivative actions.

Petitioners defiantly contend, incredibly enough, that Granite never acquired ownership of LFI's stock because that stock was sold to Golden Meadows when Golden Meadows loaned money to LFI in July 2000. Petitioners base this argument on printed language appearing on the back side of the stock certificate pledged by Allen for the loan which states that "I hereby sell, assign and transfer unto Golden Meadows ... 1,000,000 shares represented by the within certificate." Petitioners are not being candid with the Court. This argument was contrary to the clear testimony of Allen and Golden Meadows' principal and the argument of Golden Meadows' counsel and was rejected by each of the lower courts (as well as the Utah trial and appellate courts).

As the lower courts properly found, the stock certificate was simply pledged by Allen for a loan and was not sold to Golden Meadows. Indeed, in numerous pleadings and other documents filed in the Prior Bankruptcy Case during late 2002 and 2003 (years after they now claim Golden Meadows acquired ownership of the LFI stock on July 21, 2000), Allen and LFI's counsel represented that Allen was the sole shareholder of LFI.

Moreover, at the July 23, 2003 hearing in State Court – three years after Petitioners now claim Golden Meadows

acquired ownership – Golden Meadows' counsel, represented to the State Court that Golden Meadows did not own the LFI stock, but only had a pledge of that stock. Counsel stated "although [Golden Meadows] has an assignment of those stock interests, that does not mean that Golden Meadows owns the stock. It does not, but Golden Meadows does have a pledge of the stock. . . ." Counsel continued that "[w]e don't dispute the ownership of the stock in Cari Allen but just assert a security interest in the pledge. . . ." In addition, Golden Meadows' principal, testified at the November 7, 2003 hearing that the pledge agreement and transfer of the stock certificate did not transfer ownership of the stock from Allen to Golden Meadows, but simply constituted a pledge of the stock to secure the loan by Golden Meadows.

Likewise, Allen herself testified that as of October 28, 2002 – over two years after she now argues Golden Meadows acquired ownership of the stock – she owned 100% of the stock of LFI.

Petitioners' attempt to change their position, ignoring their prior testimony and argument, is disingenuous and was correctly rejected by the lower courts.

CONCLUSION

It is axiomatic that this Court's review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari should be granted only for compelling reasons. However, this matter presents no conflict with another United States court of appeals or a state court of last resort. This matter does not present an important unsettled federal question. The Petition does not call for the exercise of this Court's supervisory powers because none of the lower federal or state courts, in twelve separate appeals and three certiorari

petitions to the Utah Supreme Court and before three different trial judges, has departed from the accepted and usual course of judicial proceedings.

What this petition presents are: (1) allegations of erroneous factual findings by the bankruptcy court and Utah trial courts that Granite Stone acquired all right, title and interest in 100% of the common stock of LFI, and (2) legal theories that, in derogation of the bankruptcy Trustee, a former officer and director of a debtor corporation may continue frivolous litigation as either the debtor or its representative. Ultimately, Petitioners ask this Court to ignore twelve prior appellate decisions and review factual findings that Cari Allen, either individually or through her charade as a former governing officer or director of the debtor, has no standing. Because this case presents no compelling reason for further review, the Petition for Writ of Certiorari should be denied.

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No. 06-486

In The
Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,
Petitioners,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES i

INTRODUCTION 1

ARGUMENT 2-10

I. OWNERSHIP OF THE STOCK 2-3

II. A CORPORATE CHAPTER 7 BANKRUPTCY DEBTOR HAS STANDING AND A RIGHT TO COUNSEL IN ITS OWN BANKRUPTCY LIQUIDATION PROCEEDING 3-7

III. SHAREHOLDERS MAY ***NOT*** PLACE CORPORATIONS INTO BANKRUPTCY UNDER NEVADA LAW 7-10

CONCLUSION 9-10

TABLE OF AUTHORITIES

Baker v. Carr, 369 U.S. 186 (1962) 1

Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985) 4, 5

Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) 7

Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994) 9

Price v. Gurney, 323 U.S. 696 (1944) 7, 9

11 U.S.C. § 101(41) 4

11 U.S.C. § 541 7

11 U.S.C. § 554(c) 6

11 U.S.C. § 726(a) 6

Nevada Revised Statute §78.115 8

Nevada Revised Statute §78.120 8

Nevada Revised Statute §78.350 8

Nevada Revised Statute §78.580 8

Utah Code Anno. §43-1-2 ..... 2, 3

INTRODUCTION

Respondents challenge Petitioners' Statement of Facts in the case with only their own characterizations of facts and conclusions about them. Their central premise is that their version of facts should govern as to the main issue in dispute: Who owned the stock of Log Furniture, Inc. at the time an entity claiming to be a shareholder, but who was not, purported to file the corporation into bankruptcy? That is the issue, however, not the starting point of the controversy or proper analysis.

Respondents baldly claim Petitioners lack standing and that a corporate chapter 7 debtor is not entitled to legal representation to challenge an imposter purporting to act in its behalf in placing it into bankruptcy while disregarding traditional concepts of concrete stake in outcome of controversy, etc., Baker v. Carr, 369 U.S. 186 (1962). The essence of Respondents' argument is the notion that the corporate entity does not exist and therefore does not have standing as a non-entity because a series of lower courts have all ignored the fundamental flaw of the prerequisite starting point of analysis-who owned the stock; and that the "piling on" by subsequent courts of an initially unexamined premise makes it unreviewable. Respondents' position is that an appeal is not warranted simply because lower courts have ruled the way they have. Respondents forget that this is precisely why the Supreme Court exists: lower courts have historically, do currently, and will in the future, err. It matters not if one thousand lower courts or nineteen (the wrong number used by Respondents) rule that "separate but equal education" is constitutional, if they erred, they erred. Incidentally, two of the nine courts ruled in favor of the Petitioners.

Despite Respondents' protestations that Petitioners do not make a serious attempt to carry their difficult burden of demonstrating compelling reasons for this Court to grant certiorari review, they blithely disregard the serious and substantial issues raised by the Writ - to wit, disregard of

Supreme Court precedent and conflicts with other circuit courts as to: 1) Whether a corporate chapter 7 bankruptcy debtor has a right to counsel in its own bankruptcy liquidation proceeding; 2) whether a corporate chapter 7 bankruptcy debtor and/or its board of directors and/or its chief executive officer itself have standing to challenge a bankruptcy filing purporting to be made on the corporation's behalf by an entity purporting to be a stockholder (whose status as such is disputed); and 3) can, as a matter of law, a disputed stockholder place a Nevada corporation into bankruptcy?

ARGUMENT

I. OWNERSHIP OF THE STOCK.

Respondents simply ignore both the fact that the negotiated and endorsed stock certificate states on its face "I hereby sell, assign and transfer unto Golden Meadows Properties, LLC 1,000,000 shares represented by the within Certificate" and that Utah Code Anno. §43-1-2 flatly and unequivocally states "Title to any security receipt. . . may be transferred by delivery by any person in possession of the same. . . A person to whom title is so transferred . . .shall have absolute title."

The Respondents' arguments are further flawed for two basic reasons: First, each lower court has followed lock step in claiming the issue was already decided without ever bothering to consider and examine the fact that the Court which supposedly decided the issue (State of Utah Third Judicial District Court Judge Medley), explicitly disavowed making the determination due to Respondents' having misrepresented that Court's ruling to the other courts. Respondents would prevent all appellate courts, including the Supreme Court, from realizing the basic issue of whether Judge Medley made a determination as to ownership and from having an evidentiary hearing to make an actual, substantive determination.. Second, Respondents would have the courts adopt a view that what people have said about the legal effect of a stock transaction

makes what they said the law, rather than the governing statutes. Respondents' argument is a very shaky "house of cards" which has fatal defects at its core.

Respondents keep repeating their litany of who said what about pledges, loans, security interests, etc., but ignore the defect of their premise - how parties characterize the legal effect of something does not constitute the governing law. Governing law, as established by statute and decided cases, determines the effect of legal documents and commercial transactions, not what people say about them. The face of the certificate and Utah Code Anno. §43-1-2 determines that the endorsement, negotiation and delivery of that stock certificate to Golden Meadows constitutes an "absolute transfer of title." Simply to repeatedly ignore this is one of the many travesties of this entire case.

II. A CORPORATE CHAPTER 7 BANKRUPTCY DEBTOR HAS STANDING AND A RIGHT TO COUNSEL IN ITS OWN BANKRUPTCY LIQUIDATION PROCEEDING.

This would seem obvious on its face, yet continues to be denied on faulty legal reasoning. The Tenth Circuit panel opinion departed from the accepted and usual course of judicial proceedings and has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The concept promoted by Respondents that a legal person (a corporation) may be placed into bankruptcy by an imposter claiming absolute and exclusive authority to act and the corporate representatives not being able to challenge the imposter is simply a gross violation of fundamental notions of due process. The premise that a bankrupt person (which is how the Bankruptcy Code defines a corporation in bankruptcy, 11 U.S.C. §101(41)), may not have representation defies the plain language of the Bankruptcy Code and rules themselves, much less the Constitution. That lower

courts continue to disregard this fundamental error in an attitude of "let them eat cake" begs for this Court's attention. The premise of Respondents' and the Tenth Circuit panel that any debtor corporation has no standing or right to representation is based on plainly erroneous analysis of applicable Supreme Court precedent and governing statute.

Examination of Respondent's summary of Petitioners' contention about standing and the right to have legal counsel illustrates the Tenth Circuit panel opinion's deviation from this Court's holding in Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985). Respondents assert:

> Applying this Court's Weintraub decision, Petitioners had no standing once the chapter 7 bankruptcy case was filed, because the corporate debtor is managed only by the bankruptcy Trustee. Johnson repeatedly and erroneously claimed before the bankruptcy court, the federal district courts, the state trial courts, the Utah Court of Appeals, and the Utah Supreme Court, in numerous related proceedings that he was filing papers and appearing for and on behalf of LFI or LFI's "management," ostensibly Allen. LFI is a corporation and has been a chapter 7 debtor in bankruptcy since the Petition Date. When a corporation becomes a chapter 7 debtor (and, similarly, when a trustee is appointed for a corporation in a chapter 11 case), a bankruptcy trustee is appointed to take control of all of the corporation's property, including all rights and causes of action, and the corporate debtor's former management and directors are "completely ousted." See, Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343,348-54 (1985). See also 11 U.S.C. §323(a) (the bankruptcy trustee is the authorized "representative of the estate"). As of the Petition Date, the Trustee is the "management" of LFI, and the Trustee and her appointed counsel are the only authorized representatives of LFI.

Other than misleading this Court about the extent of former counsel Johnson's appearances who never appeared before the Utah Court of Appeals or Supreme Court, a significant problem with the insistence on this premise, which is incorrect in itself, is that if the bankruptcy petition is ***NOT*** properly filed by persons having authority to act for a corporation, there is no valid bankruptcy court jurisdiction to begin with and there should be no appointment of a trustee. An invalid case does not have a trustee with any lawful authority. Its goes to the very heart of validity of the filing and jurisdiction of the court. Claiming only a trustee can challenge the legitimacy of the filing puts the proverbial "cart before the horse." There is a continuing failure to distinguish between the debtor itself and the bankruptcy estate, a separate legal entity.

What the panel and Respondents ignore in the Weintraub decision, which was about exercise of waiving attorney/client privilege and not standing, was that the Supreme Court recognized two things - continued existence of management and therefore, the corporation, and their ability to conduct certain corporate functions. While "completely ousted" was used in one cast off phrase, the rest of the quoted opinion said "severely limited" ***NOT*** "eliminated;" it said "virtually no management powers," ***NOT*** "none." The Panel's holding and Respondent's argument is to the contrary of exactly what the Supreme Court held and is at odds with this framework of post-bankruptcy corporate existence outlined by the U.S. Supreme Court and the plain language of the Bankruptcy Code.

Respondents continue to claim that corporate existence terminates upon the filing of bankruptcy. This is another key defect in this case. This is simply not supported by any construction, strict or liberal, of the plain language of the Bankruptcy Code and is indeed contrary to such language. 11 U.S.C. §554(c) states:

> Unless the court orders otherwise, any property scheduled under section 521 (1) of this title not otherwise administered at the time of the closing of a

> case is abandoned to the debtor and administered for purposes of section 350 of this title.

11 U.S.C. §726(a) states, "Except as provided in section 510 of this title, property of the estate shall be distributed—. . .(6) sixth, to the debtor."

The Code does not say, nor in any way, shape or form state or contemplate "only to natural person debtors." 11 U.S.C. §541 (which defines the bankruptcy "estate") nowhere claims one estate is created for natural persons and another for corporate legal persons. There must be a continued existence of the entity in order for there to be anything which can be abandoned or distributed to. A debtor is defined as including corporations. The interpretation that no corporate existence continues would render these portions of the code superfluous for corporations and is an incorrect methodology for statutory construction, Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001).

A philosophy that anyone claiming authority can place I.B.M. or Microsoft into voluntary bankruptcy and deny those entities the ability to retain legal counsel to challenge the filing is simply bizarre. Yet, that is exactly what Respondents argue in this case, as they did before U.S. District Court for the District of Utah Chief Judge Dee Benson (Transcript from May 14, 2004):

"THE COURT: Let me ask you something about bankruptcy law then. For hypothetical purposes if some person comes into Bankruptcy Court and files a Chapter 7 bankruptcy petition on behalf of a company that the person claims to have authority to act on behalf of, do you follow me?

"MR. WATERMAN: Yes.

"THE COURT: The case gets filed. Let's say it is I.B.M. Corporation and somebody comes in and files a bankruptcy. A trustee gets appointed, correct?

"MR. WATERMAN: That is correct.

"THE COURT: Now, if that person had no authority whatsoever, and the real C.E.O. and authorized person for I.B.M. comes marching into the Bankruptcy Court with that person's attorney and says, wait, this is all wrong. That person who took out the petition and has I.B.M. header for Chapter 7 proceedings did not have the authority to do it. You have got to stop this nonsense. The Bankruptcy Court would simply say, as Judge Clark did in this instance, oh, you have no authority here. The only person with authority is the duly appointed trustee in bankruptcy for I.B.M. Corporation."

Holding that the bankruptcy court need not determine the authority of the persons purporting to act on behalf of a corporate entity under governing state law clearly conflicts with Price v. Gurney, 323 U.S. 696 (1944). Most critically in this respect, Nevada state law does not terminate corporate existence after bankruptcy.

III. SHAREHOLDERS MAY ***NOT*** PLACE CORPORATIONS INTO BANKRUPTCY UNDER NEVADA LAW.

Respondents assert:

> As the lower courts correctly determined, Nevada law permits any action to be taken by written consent of the shareholders without a meeting that could be taken at a meeting. See, Nev. Rev. Stat. §§78.320, 78.325 and 78A.070. Moreover, §2.8 of Log Furniture's By-Laws also provides that any action that may be taken by shareholders at a meeting may be taken by written consent of the shareholders without a meeting: "Any action which may be taken at a meeting of the Shareholders may be taken by written consent without a meeting if such action is taken in conformance with the Nevada Corporations Code."

This reasoning simply does not address the issue. The issue is not whether shareholders conducted a meeting or not, or whether shareholders can vote by "consent" as opposed to physically holding a meeting (of course they can). The issue is whether shareholders, with or without a meeting, can place a corporation into bankruptcy. Respondents, as did the bankruptcy court, noticeably fail to address the governing Nevada statute and overtly rely on inapplicable portions of Nevada law dealing with closed corporations (governed by Title 78A, Nevada Revised Statutes), not with ordinary private corporations (governed by Title 78) as is Log Furniture, Inc. Relying on statutes relating to "shareholder consent" and "closed corporations" (a statutorily designated entity), is an attempt to continue confusing the courts reviewing this serious matter.

Nevada Revised Statute §78.120 mandates that the business of the corporation be conducted through the directors - "The business of every corporation ***must*** be managed by a board of directors or trustees, ***all of whom must be natural persons who are at least 18 years of age*** [emphasis added]." Nevada Revised Statute §78.115 mandates that there be at least one director - "A corporation must have at least one director...[emphasis added]." Consequently, any person claiming to have "eliminated" a board of directors of a Nevada corporation would be making a false representation. Nevada law requires the director be a "natural person" so, apart from the elimination of the existing board being a nullity at law, appointment of a limited liability company as a director is also a nullity. There is not a "natural person" who filed the Petition in this case. It was signed by David Harris as "President of Machinery Hardware & Supply, Manager of Granite Stone, L.C." i.e. the CEO of a corporation acting as manager for a limited liability company which purports to act as a shareholder. Harris does not purport himself to be an officer or director or shareholder of Log Furniture, Inc. The voting rights of stockholders defined by Nevada Revised Statutes §78.350 ***does not*** include the management authority delegated to the

directors. NRS §78.580 explicitly regulates winding up and dissolution of a corporation being in the sole authority of the board. This contrary notion of shareholder ability to manage and place in bankruptcy violates the public policy established by the Nevada legislature and the plain language of the Nevada statutes. A bankruptcy judge sitting in Utah does not have the power and authority to rewrite Nevada statutes.

The Bankruptcy Court, District Court and Tenth Circuit Court panel opinion completely disregard this law and undermine the requirements of this Court made in Price v. Gurney, 323 U.S. 696 (1944) and their decisions, therefore, deviate from the law as established by the U.S. Supreme Court:

> The District Court in passing on petitions filed by corporations under Chapter X must of course determine whether they are filed by those who have authority so to act. ***In absence of federal incorporation, that authority finds its source in local law. If the District Court finds that those who purport to act on behalf of the corporation have not been granted authority by local law to institute the proceedings, it has no alternative but to dismiss the petition.*** It is not enough that those who seek to speak for the corporation may have the right to obtain that authority. . . But nowhere is there any indication that Congress bestowed on the bankruptcy court jurisdiction to determine that those who in fact do not have the authority to speak for the corporation as a matter of local law are entitled to be given such authority and therefore should be empowered to file a petition on behalf of the corporation. [Emphasis added].

Rulings by the lower courts in this case also conflict with another Court of Appeals holding, albeit under different circumstances but with respect to the same proposition-determining legal authority to file for a corporation, stated in Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994):

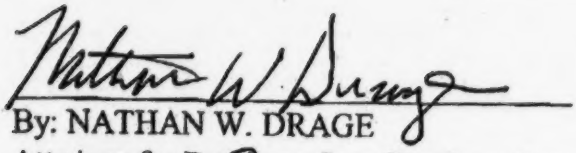
> [W]e believe it ***improper*** for the bankruptcy court to assume jurisdiction over a case simply because there is debt involved; in short, there first must be valid jurisdiction over the matter before a bankruptcy court can proceed. In the absence of a valid petition, a bankruptcy court has no basis upon which to dispose of a corporation's assets or resolve its debt status. [Emphasis added]

CONCLUSION

Respondents note that a petition for a writ of certiorari should be granted only for compelling reasons. Respondent's have expended in excess of $500,000 in pursuing a collection matter involving less than $20,000. That alone should cause the courts to wonder "why" and take a closer look at the facts and the law. Petitioner Cari Allen as a matter of last resort, seeks for this Court to end the economic rape that has reduced her to choosing between eating, or photocopying documents for filing with the numerous courts below. Tremendous lawyer resources, in the form of numerous attorneys from one of the largest law firms in Utah, have been amassed against her in every way as she has tried to recover from a wrongful bankruptcy filing on the company she invested years to build.

Petitioners claim due process has been denied by the wrongful and un-authorized filing of a petition of bankruptcy for Log Furniture, Inc., a Nevada corporation. Just because that corporation is not I.B.M. or Microsoft, does not minimize or invalidate the due process rights of the Petitioners and the substantial public policy in requiring that the bankruptcy courts follow the law: 1) factually determine who is authorized to file the petition, 2) allow the corporation to be represented by those who claim the filing is invalid, and 3) apply the correct state corporate statutes to the case.

Respectfully submitted,



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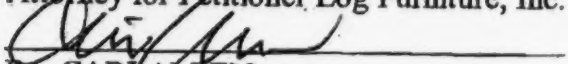

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